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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DESHAWN REVONER, Individually and as Executor, etc. Plaintiff, Cross-defendant and Appellant, v. CHARLENE INGHRAM, Defendant, Cross-complainant and Respondent.	B235133 (Los Angeles County Super. Ct. No. BC 415378)
Estate of CATHERINE KERR, Deceased.	(Los Angeles County Super. Ct. No. BP 120471)
DESHAWN REVONER, Individually and as Executor, etc., Petitioner and Appellant, v. CHARLENE INGHRAM, Objector and Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Reva G. Goetz, Judge. Reversed and remanded.

George M. Halimi for Petitioner and Appellant.

Charlene Inghram, in pro. per., for Objector and Respondent.

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Appellant DeShawn Revoner brought a lawsuit against respondent Charlene Inghram and then a probate petition as executor of his grandmother's estate, alleging additional causes of action against Inghram. Inghram filed a cross-complaint against Revoner in the adversary action. The two cases were deemed related and tried simultaneously by the court. All causes of action relate to a dispute over which of the parties owns the former residence of appellant's grandmother, Catherine Kerr. The bench trial resulted in a judgment in favor of Inghram on all causes of action. The trial court determined that Inghram was the 100 percent owner in fee simple of the subject property. We reject all but one of Revoner's contentions of error. We hold that the trial court erred in interpreting section 21350 of the Probate Code.[1] On this basis, we reverse and remand for the trial court to make some limited determinations, but not for a complete retrial.

FACTS AND PROCEDURAL HISTORY

1. The Complaint, Cross-complaint, and Probate Petition

a. The Verified Complaint

Revoner filed his first amended complaint (FAC) against Inghram in July 2009. The FAC alleges causes of action for fraud, imposition of constructive trust, cancellation of instrument, rescission, quiet title, declaratory relief, and injunctive relief. The subject matter of the FAC is Kerr's former residence at 425 East 41st Place in Los Angeles (the subject property). The FAC alleges the following. Prior to January 30, 2007, Kerr owned the subject property. She was on her death bed on January 30, 2007, having been diagnosed with ovarian cancer. Kerr intended to transfer title to the subject property to Revoner, who

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[1] All further statutory references are to the Probate Code unless otherwise stated.

was a minor at the time. But on that date, she signed a quitclaim deed transferring her interest in the subject property to herself, Inghram, and Revoner as joint tenants (2007 Deed). Inghram agreed to hold title to the subject property in trust for the benefit of Revoner. Kerr died soon thereafter, on April 14, 2007.

The fraud cause of action alleges that Inghram had no intention of holding the subject property in trust for Revoner's benefit, but intended to obtain title for her own use and benefit. Additionally, on April 10, 2008, Revoner and Inghram agreed that Inghram would transfer title to a 1995 Dodge Intrepid to Revoner and give him $10,000 to repair the Dodge. In exchange, Revoner agreed to sign a promissory note secured by a deed of trust on his share of the subject property. Instead, Inghram obtained Revoner's signature on a quitclaim deed that transferred all of his rights in and title to the subject property to Inghram (2008 Deed). Revoner allegedly believed, because of Inghram's misrepresentations, that he was signing loan documents.

The cause of action for imposition of constructive trust alleges that, by virtue of her fraudulent acts, Inghram holds title to the subject property as a constructive trustee for Revoner's benefit. The cause of action for cancellation of instrument alleges that the 2008 Deed was void in that Inghram obtained it by fraud. Similarly, the cause of action for rescission alleges that the 2008 Deed should be rescinded due to the fraudulent acts of Inghram. The causes of action for quiet title and declaratory relief seek to establish that Revoner holds a superior title to the subject property against Inghram, and that he is the owner in fee simple. The cause of action for injunctive relief alleges that Revoner received a notice of eviction from Inghram and seeks to enjoin Inghram from evicting him.

b. The Verified Cross-complaint

Inghram filed a cross-complaint against Revoner in August 2009 for quiet title, declaratory relief, breach of contract, and partition. The cross-complaint alleges the following. Inghram and Kerr had a long-standing relationship. Their families had a close relationship since Kerr's childhood, when Kerr and her family lived next door to Inghram's

grandparents. Inghram's mother and Kerr attended high school together and were very good friends. Inghram herself became friends with Kerr's daughter, Betty Jo Kerr (Betty Jo).[2] Betty Jo had a son, Revoner. At some point she became addicted to drugs. Kerr thereafter adopted Revoner. Revoner was physically and verbally abusive with Kerr.

After Kerr's husband died, Inghram assisted her by providing funds for household expenses in times of need or crisis. Kerr transferred title to the subject property to herself, Inghram, and Revoner as joint tenants before her death. After Kerr's death, Revoner continued to live on the subject property. Between April 2007 and December 2007, Inghram and Revoner had an oral agreement that he could stay there and would maintain the property in a clean and orderly manner. Also, his girlfriend would be allowed to live there, but no one else. But Revoner did not pay for any utilities, property taxes, insurance, or upkeep of the property. He let the property fall into disrepair and kept it in a state that was not clean or safe. He allowed others to live on the property, including Betty Jo, who Kerr expressly said she did not want living there because of Betty Jo's purported drug use and criminal activity. Others whom Revoner let reside there engaged in criminal activity, resulting in police activity on the property.

On December 6, 2007, Inghram and Revoner signed an agreement that Inghram would pay the property taxes, homeowners insurance, and maintain the outside of the house in exchange for a lien on Revoner's interest in the subject property (2007 Agreement). On or about April 10, 2008, Revoner asked Inghram for a loan because the utilities had been disconnected for nonpayment. He also needed transportation. He agreed to transfer his interest in the property to Inghram in exchange for $10,000 and the Dodge. He understood that he was signing away his interest in the subject property. He agreed to repay the money no later than July 10, 2008, and when he did so, Inghram would reconvey his half interest in

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[2] Because we refer to Catherine Kerr by her surname, we refer to Betty Jo Kerr by her first name to avoid any confusion. We do not intend this informality to reflect a lack of respect.

the property back to him. The parties signed a written agreement to this effect (2008 Agreement). The 2008 Deed was the result of this agreement. Thereafter, he continued to live on the property, but did not pay all the expenses and caused more waste and deterioration on the property. As of the filing of the cross-complaint, Revoner had not repaid any money to Inghram. Inghram eventually filed an unlawful detainer action to have Revoner removed from the subject property. He did not file a responsive pleading and was evicted from the property.

The causes of action for quiet title and declaratory relief seek a determination that title to the subject property is vested in Inghram alone. The cause of action for breach of contract relates to Revoner's alleged breach of the 2007 and 2008 Agreements between the parties. In the cause of action for partition, Inghram seeks partition only to the extent that the court determines she owns less than 100 percent interest in the subject property.

c. The Verified Probate Petition

In July 2010, Revoner, as executor of Kerr's estate, filed a probate petition for quiet title, constructive trust, and void transfer of real property. The petition alleges as follows. On December 2, 2006, Kerr intended to transfer title to the subject property to Revoner. She signed her last will and testament on that date, naming Revoner as the sole beneficiary of her estate. Shortly before January 30, 2007, Inghram approached Kerr and convinced her that it would be best to transfer title to the subject property to herself, Inghram, and Revoner as joint tenants. Inghram represented to Kerr that she would hold title to the property in trust for the benefit of Revoner. Kerr then signed the 2007 Deed transferring title to all three as joint tenants. Kerr signed the 2007 Deed as a result of undue influence by Inghram. At the time, Kerr was not of sound mind and did not have the requisite capacity to transfer her assets.

The cause of action for quiet title seeks a determination that title to the subject property is vested in Kerr's estate alone, and Inghram has no right, title, or interest in the property. The cause of action for imposition of constructive trust alleges, as in the FAC, that Inghram holds title to the subject property as a constructive trustee for the benefit of Kerr's estate. The cause of action for void transfer of real property alleges that Inghram was

a fiduciary of Kerr and abused Kerr within the meaning of section 259, and as a result, the 2007 Deed is void and invalid. In addition, this cause of action alleges that the transfer of the subject property to Inghram was invalid pursuant to section 21350.

2. Evidence Adduced at Trial

The adversary action and the probate petition were deemed related and tried simultaneously. The bench trial commenced on May 2, 2011, and continued on May 3 and 4. The parties adduced the following evidence at trial.

a. Stipulated Facts

The parties stipulated to the followings facts. The subject property was located at 425 East 41st Place in Los Angeles. Prior to January 30, 2007, Kerr was the sole owner of the subject property. On January 30, 2007, Kerr executed the quitclaim deed transferring her interest in the subject property to herself, Inghram, and Revoner as joint tenants. Kerr died on April 14, 2007. Revoner was named executor of her estate. On or about April 10, 2008, Inghram paid Revoner $10,000 and transferred to him title to a 1995 Dodge Intrepid. Also on or about April 10, 2008, Revoner signed a quitclaim deed transferring his one-half interest in the subject property to Inghram. On or about May 19, 2009, Inghram initiated an unlawful detainer proceeding against Revoner. Revoner was evicted from the subject property on or about July 8, 2009.[3]

b. Betty Jo Kerr

Betty Jo is Kerr's daughter and Revoner's biological mother. Betty Jo had a conversation with her mother in December 2006 or January 2007 in which Kerr stated that she wanted Revoner to own the subject property after she passed away. Other than Revoner, Kerr did not mention anyone else she wanted to own the subject property.

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[3] These stipulated facts were contained in the parties' joint pretrial statement filed with the court. The parties did not include the joint pretrial statement in the record on appeal. On the court's own motion, we ordered the record augmented to include the joint pretrial statement filed in superior court on April 20, 2011. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

c. Revoner

Revoner lived with his grandmother and adoptive mother, Kerr, all his life. In January 2007, Kerr told him that when she passed away, she would leave the subject property to him. Revoner does not know the difference between a will and a quitclaim deed.

Right before Kerr died, she told him that he and Inghram were going to be in her will. She told him she wanted Inghram on the will because she thought he was too young to manage the property by himself. In January 2007, he thought that Kerr was doing well. She was "up and around" and going out. He did not know that she was sick.

After Kerr died, Revoner lived on the subject property. Inghram never lived on the property. He had money to pay the property taxes and expenses at one point, but there were other times when he was broke. Inghram paid the taxes on the property one time. Revoner verified that he signed the 2007 Agreement, which stated that Inghram would pay the property taxes and fire insurance on the subject property, make repairs to the fence in the backyard, and maintain the lawn. In exchange, Revoner would grant her a lien on one-half of his interest in the property. He has known Inghram since he was a baby. She visited him and Kerr approximately once a month.

Revoner never asked Inghram to give him $10,000, nor did he ask her for a car. She and her husband offered to give him a car and loan him $10,000, however. He agreed to pay the $10,000 back to Inghram in three months. They gave him the car and he did not agree to pay for the car. He needed the money to pay his bills, buy food, and fix the car. He did not intend to use the entire amount. His electricity and other utilities had been turned off, and he used part of the money to turn his utilities back on. His bills totaled less than $500; he needed $5 for food, and $300 to fix the car. He also used part of the money to buy automobile insurance. After a year, he eventually spent the entire $10,000 anyway because other things "kept coming up." When he was supposed to pay Inghram back, three months after she gave him the money, he still had approximately $5,000 of it. He did not pay her back the money at that point, and he could not recall why. At some point, Inghram evicted him from the subject property.

Revoner verified that he signed the 2008 Agreement, which stated that he was "convey[ing] all of his interest" in the subject property to Inghram for $10,000 plus the Dodge Intrepid. The agreement also provided that "*if* Deshawn Revoner can repay the $10,000 plus pay $5,000 seller's price for the automobile by July 10, 2008, Charlene Inghram will convey that interest in the property back to him." (Italics added.) Revoner's understanding of the agreement was that he was conveying all his interest in the subject property to Inghram for $10,000 and the Dodge. He understood that the money was a loan. He thought that he had three months to pay her back, and if he did not, his half of the subject property would be hers. Inghram came to him approximately a year after she gave him the money and asked him to pay it back. He asked if he could have a little longer to pay her back, and she said no, it was too late.

Revoner also verified that he signed the 2008 Deed conveying "[a]ll of his interest" in the subject property to Inghram in exchange for the Dodge and $10,000.

He understood that he had only a 50 percent interest in the subject property after Kerr died. He never had a conversation with Inghram in which she said she would hold the property in trust for him. Kerr told him that Inghram would hold half the property in trust for him.

During late 2007 and in 2008, Revoner kept five pit bulls at the subject property, and he allowed at least one pit bull in the house. He allowed dog droppings and urine to get on the floor, and there were times when he did not clean up the messes immediately.

Revoner described his relationship with his grandmother as "excellent." He cooked and cleaned for her, took her to the doctor, and took her wherever else she needed to go. He occasionally argued with Kerr in the last two years of her life. In April 2007, right before she died, she was sick and needed to go to the hospital. Revoner either took her or called an ambulance for her.

Revoner had two other people living on the subject property with him. He allowed Betty Jo to live in the house even though Kerr did not want her to live there.

d. Sheila Nash

Sheila Nash resides in West Covina, but prior to moving there, she lived on 41st Place in Los Angeles and was Kerr's neighbor. In 2006 and 2007, Nash would visit Kerr approximately once a month. During that time frame, Kerr frequently told Nash that she wanted to leave the subject property to Revoner. Kerr wanted to put that in a will. Nash does not recall if they discussed how Revoner would take care of the subject property after she died. Approximately a year before Kerr died, Nash suggested that Kerr quitclaim the property to Revoner. Kerr never mentioned to Nash that she had changed her mind regarding the property's ownership, and she never mentioned that she wanted anyone other than Revoner to own the property.

e. Wanda Contreras

Wanda Contreras resides in Apple Valley. Prior to that, she lived on 41st Place in Los Angeles, where Kerr was her next door neighbor. Contreras and Nash are sisters. Contreras talked to Kerr two or three times a month on the telephone. She visited Kerr approximately three times a year. Kerr wanted Contreras and Nash to help her set up the subject property for Revoner. Kerr wanted to put the property in Contreras's and Nash's names along with Revoner so that, if she died, they could give it to Revoner and help him take care of it. Later Kerr told them that she was going to leave the subject property to another friend who guaranteed that, when Kerr died, she would turn the property over to Revoner. Contreras did not know the friend's name, but she knew the friend was in real estate. Kerr had Contreras and Nash go to an attorney's office with her. There was a quitclaim deed there but Kerr ended up not signing it. Kerr never indicated that she wanted anyone other than Revoner to own the property.

f. Tonya Strogan

Tonya Strogan was Kerr's next door neighbor and good friend. In January 2007, Kerr seemed to be of her own mind. She was doing everything on her own and was "up and around." Kerr used to call on Strogan and her husband when Revoner "was doing things like hitting her, pushing her, or taking her car." This happened every two weeks or once a month.

Strogan went to Kerr's house on Easter in 2007. She found Kerr laying in her own urine and feces and told Revoner to call the paramedics. He said he could not because he needed to go pick up his girlfriend from work. Strogan called the paramedics herself.

Revoner has asked Strogan for money before to buy food. He told her about the money he had received from Inghram and said he needed it to pay bills. His electricity was always getting shut off.

In 2008, Strogan began to notice a change in the subject property. The property was getting run down. The grass was dying but also growing high, the rugs and curtains were all "messed up," and one of his friends moved in and they had pit bulls in the basement of the house. Revoner had approximately five people living in the house, including his biological mother, Betty Jo.

g. Inghram

Inghram had known Kerr all her life. Inghram's grandparents were next-door neighbors and friends with Kerr's mother, and Inghram's mother was good friends with Kerr. Inghram also knows Betty Jo. Inghram either saw or talked to Kerr once a week. In November 2006, Kerr called Inghram and asked whether she would put her name on the subject property. Kerr said she wanted Inghram's name on the house because Revoner had been verbally and physically abusive and she did not know whether he would "be taken off again to placement." Revoner had gone to placement through the juvenile court three or four years before for over a year. Kerr also told her she wanted her name on the property because of all the things Inghram and her family had done for Kerr through the years. Inghram said she would have to think about Kerr's request.

In the middle of January 2007, Inghram told Kerr that she had decided Kerr could put her name on the subject property. Kerr asked her to "prepare" the paperwork and bring it over. Kerr asked her to put Kerr's name, Inghram's name, and Revoner's name on the property in joint tenancy. Inghram did as requested. Kerr read the paperwork and saw all three names on the property and said that was what she wanted, and she wanted to sign the paperwork in a few days. She and Inghram went and signed the papers a few days later.

Inghram's husband also went with them. Inghram verified that the 2007 Deed was the paperwork Kerr signed.

In February 2007, Kerr told Inghram that she had told Revoner about the 2007 Deed. Kerr never told Inghram that she wanted Inghram to hold the subject property in trust for Revoner. Likewise, Inghram never told Kerr that she would hold the property in trust for him, and she never told Revoner that. Kerr never told Inghram who she wanted to live on the property until she died. Kerr did not ask Inghram to pay property taxes while she lived. It was Inghram's understanding that, as of the date the Kerr signed the 2007 Deed, Kerr still owned the subject property and lived there, and Inghram did not have any rights as to the property.

On Easter in 2007, Strogan called her and told her that Kerr had been hospitalized. She talked to doctors about Kerr's condition when she visited Kerr in the hospital. That was when she learned that Kerr had ovarian cancer and also a bowel blockage. Revoner, Betty Jo, and Inghram had a discussion with the doctors regarding what to do about Kerr's condition. The doctors explained that Kerr needed an immediate operation for the bowel blockage. Betty Jo and Revoner decided not to proceed with the operation. Kerr died approximately a week later on April 14. Inghram arranged Kerr's funeral service and paid some of the expenses for it.

In May 2007, Inghram discussed the subject property with Revoner. They discussed that they both owned the house as joint tenants, that he was going to keep the house clean and not let anyone other than his girlfriend live there, and, most importantly, that he was going to get a job. They had later discussions about the house when he was not keeping it clean and breaking furniture during fights with his girlfriend. Also, she had given him a mower to maintain the lawn, but he was not doing that.

Inghram and Revoner entered into the 2007 Agreement because he was not maintaining the house or paying the property taxes and fire insurance, so she agreed to do these things in exchange for a lien on one-half of his interest in the subject property. She never recorded that lien.

Every time she saw Revoner, he would ask her for money. Around April 2008 he asked for money. His water, electricity, gas, and telephone had been turned off. He said he needed the money to pay his utilities bills, which were over $1,600 or $1,700. He did not have a job at the time. He told her he could not get a job because he did not have any transportation. She gave him $10,000 and the Dodge in exchange for his one-half interest in the subject property. She agreed that she would reconvey his one-half interest in the property if he repaid the money in three months. He was aware that if he did not repay the money in that time period, she would remain 100 percent owner. Revoner told her he could repay the money in three months because he was getting a student grant. The money was not a loan, but an exchange for his one-half interest. It was her intention that the 2008 Agreement was a purchase and sale agreement, giving Revoner the option to repurchase his interest in the property by paying back her $10,000 plus $5,000 for the Dodge.

Revoner never attempted to repay her the money. She allowed him to stay on the property, but at some point she asked him to pay rent of $500 a month. She prepared a rental agreement, but he refused to sign it, and he never paid any rent. At the beginning of 2009, Inghram became aware that there were other people living in the house. Revoner's telephone had been turned off and so she would drive by to check on the house approximately once a week. She would see cars in the driveway, and the neighbor, Strogan, also told her that people were living in the house and garage. Once she went into the house and saw people were living there. At some point, she gave Revoner a 30-day notice to vacate. She decided to do that because there was one person living in the garage illegally, and she suspected the tenants were paying him rent and he was not paying her any money.

Revoner did not move out in 30 days. He told her he would not because he did not have anywhere else to go. Inghram eventually filed an unlawful detainer action and evicted him from the subject property in July 2009. He returned to the house many times after being evicted, and Inghram would call the police when that happened.

h. Lynn Eddington

Lynn Eddington knew Kerr since the 1950's. He lives on 41st Place in Los Angeles. Eddington is Strogan's boyfriend. He visited with Kerr two or three times a week. He has

known Revoner since he was born. He has known Inghram for approximately 10 years through Kerr. In January 2007, Kerr was very sharp mentally. They discussed Revoner around this time period. He was not treating Kerr very well. Kerr asked Eddington to watch over the subject property, but he told her that it was too much responsibility for him to handle. Kerr thought that Revoner could not handle the house on his own.

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The court entered judgment in favor Inghram on all causes of action in Revoner's complaint and probate petition. It entered judgment in favor of Inghram on the quiet title cause of action in her cross-complaint and found that she was the 100 percent owner in fee simple of the subject property. It held that her causes of action for declaratory relief, breach of contract, and partition were rendered moot by the judgment on the quiet title cause of action. Inghram also sought damages in her cross-complaint for the alleged waste to the property Revoner had committed, and for his failure to pay a fair share of the property expenses and failure to make it available for rental. The court denied her any damages. After the court entered judgment for Inghram, Revoner timely appealed.

STANDARD OF REVIEW

"'Our review of questions of law is de novo. [Citation.] However, to the extent [an] appeal implicitly challenges any factual findings of the trial court, we do not disturb the trial court's findings if substantial evidence supports the judgment. Instead, we resolve all conflicts in favor of the judgment. . . .'" (*Vanderkous v. Conley* (2010) 188 Cal.App.4th 111, 116-117.)

DISCUSSION

Revoner contends that the trial court erred in: (1) disregarding the intention of Kerr that Inghram hold title to the subject property in trust for the benefit of Revoner; (2) failing to declare the 2007 Deed a void donative instrument under section 6110; (3) failing to declare that the 2008 Agreement was a loan, and consequently, Inghram could not claim ownership of Revoner's interest in the subject property without foreclosing on his interest; (4) failing to declare that the 2008 Agreement is void due to mistake of facts; and (5) failing to declare Inghram a prohibited beneficiary of the 2007 Deed under section 21350. We

reject all but Revoner's final contention that the trial court erred in interpreting and applying section 21350.

1. Kerr's Intentions

We find no merit in Revoner's contention that the trial court erred in disregarding Kerr's intent that Inghram hold title in trust for the benefit of Revoner. First, assuming solely for the sake of argument that he is correct, he does not explain on which causes of action he should have prevailed as a result and why he should have prevailed. His argument consists only of pointing to the evidence that supports his view of Kerr's intent. We presume the judgment of the lower court is correct, and Revoner must affirmatively show prejudicial error to obtain reversal. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) He does not carry his burden on this issue.

Second, Kerr's alleged intention to have Inghram hold the subject property in trust for Revoner was not an undisputed fact, as Revoner contends. To the extent the court made any finding about Kerr's intention, substantial evidence supported the conclusion that she had no intention for Inghram to hold the property in trust. Inghram testified that Kerr never said she wanted Inghram to hold the subject property in trust for Revoner, and Inghram never told Kerr that she would hold the property in trust for him. Instead, Kerr told her she wanted her name on the property because of Revoner's abusive behavior and because of what Inghram and her family had done for Kerr throughout the years. We do not evaluate the credibility of witnesses but defer to the trial court as the trier of fact, and the testimony of a single witness may provide substantial evidence. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614; *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) In view of these principles, Inghram's testimony constituted substantial evidence to support any finding the court made that Kerr had no intention of Inghram holding the property in trust for Revoner.

2. Section 6110

Revoner contends that the 2007 Deed -- in which Kerr made herself and the parties joint tenants -- was not a present grant of interest in that Kerr intended it to be effective only upon her death, and it was thus testamentary in character. He argues Kerr therefore needed

to execute it with the formalities necessary for the execution of wills under section 6110. Despite Revoner's argument, the trial court held that Inghram prevailed on all causes of action, including his claim that the 2007 Deed was a void transfer of real property. This necessarily implies a finding that the 2007 Deed was valid and not a void testamentary transfer. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58 ["The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment."].) We conclude that sufficient evidence supported the finding that the 2007 Deed was not a void testamentary transfer.

"[A] will must be executed in accordance with certain formalities [citations] and an attempted testamentary disposition by a mere deed is invalid. It therefore becomes important at times to determine whether an instrument is intended as a deed or a will." (Witkin, Summary 10th (2005) Wills, § 105, p. 171; see also *Counter v. Counter* (1951) 104 Cal.App.2d 786, 792 [if the intention of the grantor is that title vest in the grantee only after the grantor's death, then a deed "is entirely inoperative as constituting an attempt by the grantor to make a testamentary disposition of his property. This may only be done by will executed as required by the law of wills of this state, and a deed, the purpose of which is intended to be testamentary, cannot be given effect."].)

As pertinent here, to be valid, a deed must be "delivered" from the grantor to the grantee. (*Osborn v. Osborn* (1954) 42 Cal.2d 358, 363.) Legal delivery for these purposes is a question of intent. (*Ibid.*) "[T]o constitute a valid delivery there must exist a mutual intention on the part of the parties, and particularly on the part of the grantor, to pass title to the property immediately. In other words, to be a valid delivery, the instrument must be meant by the grantor to be presently operative as a deed, that is, there must be the intent on the part of the grantor to divest himself presently of the title." (*Meyer v. Wall* (1969) 270 Cal.App.2d 24, 27.) When "the grantor's 'only instructions are in writing, the effect of the transaction depends upon the true construction of the writing.'" (*Osborn v. Osborn*, *supra*, at p. 364.) Delivery and the intent to pass title are questions of fact for the trial court's determination. (*Meyer v. Wall*, *supra*, at p. 27.)

Here, substantial evidence demonstrated that Kerr intended to create a joint tenancy with immediate effect, not a will with effect only after her death. The 2007 Deed did not entirely divest her of title to the subject property. It instead created a joint interest owned by herself, Revoner, and Inghram in equal shares. (Civ. Code, § 683, subd. (a) [defining a joint tenancy].) The deed is clear and unambiguous in its statement that Kerr is quitclaiming the subject property to Kerr, Inghram, and Revoner as joint tenants. Inghram testified that Kerr asked her to prepare a deed naming the three of them as joint tenants. Kerr looked it over, and confirmed that this was what she wanted. There is no evidence whatsoever that Kerr said the joint tenancy should take effect only after her death.

Revoner points to Inghram's testimony that she did not pay property taxes on the property while Kerr lived, that her understanding was Kerr was going to continue to live on the property and own it while Kerr lived, and that her understanding was she did not have any right to the property while Kerr lived. This evidence does not persuade us the court erred. An agreement between joint tenants that gives one joint tenant exclusive possession, occupancy, or use of the property is not incompatible with the existence of a joint tenancy. (*Toth v. Crawford* (1963) 212 Cal.App.2d 827, 830; *Taylor v. Taylor* (1961) 197 Cal.App.2d 781, 787.) The parties to a joint tenancy may agree to this. Thus, even if Kerr wanted exclusive possession of the subject property while she lived, this was not necessarily inconsistent with an intent to create a joint tenancy immediately. The trial court did not err in failing to declare the 2007 Deed void pursuant to section 6110.

3. 2008 Agreement Not a Mortgage Loan

Revoner contends that the 2008 Agreement was a mortgage loan, with his interest in the subject property acting as security for a loan from Inghram of $10,000 plus the Dodge. As a consequence, Revoner contends, Inghram had to foreclose on the property to claim his interest. Inghram contends the agreement was a purchase agreement with an option for Revoner to repurchase his interest for $10,000 plus $5,000 for the Dodge. The trial court disagreed with Revoner and found that the agreement was not a loan, and Revoner's interest in the property was not mere security for a loan. Instead the transaction was a conveyance. We hold the trial court did not err.

"Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage . . . ." (Civ. Code, § 2924, subd. (a).) The court presumes, however, "that a deed absolute in form . . . is just what it purports to be and not a mere mortgage [citations], and the burden of proof rests upon the one who contends that the deed is a mortgage to prove the issue by clear and convincing evidence . . . ." (*Cavanaugh v. High* (1960) 182 Cal.App.2d 714, 718.) Likewise, whether an agreement constitutes a security and hence an equitable mortgage "is primarily a question of intention [citations], to be deduced from all the attending facts and circumstances including the subsequent conduct of the parties . . . ." (*Id.* at p. 717.) On appeal, these questions are governed by the substantial evidence rule like any other issue of fact. (*Id*. at p. 718.) Thus, "our review is narrowed to whether the record before us reflects any evidence of a substantial nature that supports the finding of the trial court that the deed absolute on its face was intended by the parties to be just that," and not a mortgage. (*Workmon Constr. Co. v. Weirick* (1963) 223 Cal.App.2d 487, 491.) If the parties intended a secured transaction and created a mortgage, then indeed the mortgagee "must follow the procedure specified in Code of Civil Procedure section 726; that is, foreclose on that security" in order to enforce its rights under the mortgage. (*Kaiser Industries Corp. v. Taylor* (1971) 17 Cal.App.3d 346, 352.)

The intent of the parties to the transaction is the most important factor, but the mere undisclosed intention of one party that the deed was a mortgage does not change the character of a deed absolute on its face. (*Workmon Const. Co. v. Weirick*, *supra*, 223 Cal.App.2d at p. 492.) "'It must appear to the court beyond all reasonable controversy that it was the intention of not only one but all of the parties that the deed should be a mortgage.'" (*Id.* at p. 492.)

A discrepancy between the fair market value of the property conveyed and its contractual sales price is not singularly controlling, though it is one of many factors that the trial court should consider in determining intent, along with all the facts and circumstances surrounding the transaction. (*Develop-Amatic Engineering v. Republic Mortgage Co.* (1970) 12 Cal.App.3d 143, 149.) Similarly, "[t]he mere fact that an option to repurchase is

given at the same time is not sufficient, of itself, to establish the fact that a mortgage was intended by the parties." (*Glasgow v. Andrews* (1954) 129 Cal.App.2d 660, 664.) "'[S]omething more than a reservation of the right to repurchase, or a covenant to reconvey, must be shown, in order to convert an absolute deed into a mortgage.'" (*Workmon Constr. Co. v. Weirick, supra,* 223 Cal.App.2d at p. 492.)

But an "essential requisite" of a mortgage (*Workmon Const. Co. v. Weirick, supra,* 223 Cal.App.2d at p. 493) is a "subsisting, continuing debt and a continuation of the relation of debtor and creditor" (*Spataro v. Domenico* (1950) 96 Cal.App.2d 411, 413). If there is no promise to pay and no indebtedness, there can be no mortgage. (*Id.* at p. 413.)

Another factor for consideration is whether the grantee exercised rights consistent with ownership after the transaction, such as possession of the property, collecting rents on it, and paying taxes on it. (*Develop-Amatic Engineering v. Republic Mortgage Co., supra,* 12 Cal.App.3d at p. 149.) If so, this suggests the transaction was a sale and not a mortgage. (*Ibid.*)

Here, substantial evidence supported the finding that the 2008 transaction was not a mortgage loan but a simple conveyance of Revoner's interest in the subject property. The 2008 Deed was absolute on its face, stating that Revoner was conveying "[a]ll of his interest" in the subject property to Inghram, and that "[t]his conveyance is an exchange for a 1995 Dodge Intrepid and $10,000 in cash." The 2008 Agreement was to the same effect, stating that Revoner was "conveying all of his interest" in the subject property "for the sum of $10,000 plus an 1995 Dodge Intrepid automobile." The option to repurchase stated: "It is also agreed upon that if Deshawn Revoner can repay the $10,000 plus pay $5,000 seller's price for the automobile by July 10, 2008, Charlene Inghram will convey that interest in the property back to him." On its face, the option to repurchase did not establish a promise to repay or a continuing obligation to repay -- it merely provided that *if* Revoner could pay Inghram these amounts within a certain period of time, she would reconvey his interest to him. Additionally, while Revoner continued to live in the subject property after the transaction, Inghram prepared a rental agreement and asked him to pay rent (which he refused to do). There was also evidence that Inghram paid the property taxes for the

property and provided for maintenance. Finally, while Revoner testified that he understood the transaction as a loan, Inghram testified that it was not a loan but a straightforward exchange of $10,000 and the car for his interest in the property. In sum, there was sufficient evidence to support the court's finding that this was not a loan agreement but a simple conveyance.

4. Rescission of 2008 Agreement and Deed for Unilateral Mistake of Fact

Assuming the trial court did not err in finding the 2008 transaction was not a mortgage loan, Revoner contends that he should be able to rescind the transaction due to his unilateral mistake of fact, the mistake being that he thought the 2008 Agreement was a loan and not a purchase agreement. In finding that the transaction was not a loan but a conveyance, the court also found that Revoner "knew what he was doing." Essentially, the court impliedly found there was no mistake of fact. We hold the court did not err.

"A party may rescind a contract if his or her consent was given by mistake. (Civ. Code, § 1689, subd. (b)(1).) A factual mistake by one party to a contract, or unilateral mistake, affords a ground for rescission in some circumstances. . . . Civil Code section 1577 states in relevant part: 'Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in: [¶] 1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract. . . .'" (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 278.) Whether "one has acted under a mistake is for the trial court whose finding thereon, if supported by substantial evidence, will be conclusive on appeal." (*Walton v. Bank of California* (1963) 218 Cal.App.2d 527, 543.)

In the case at bar, while Revoner said he understood the $10,000 was a loan, he also said he understood at the time that he was conveying all his interest in the subject property to Inghram for $10,000 and a Dodge. The 2008 Agreement gave him until July 2008 to pay Inghram in exchange for her reconveying his interest. Even though he still had $5,000 of the money in July, he made no attempt to pay her. In fact, he never made any attempt to return the money she purportedly "loaned" him. The trial court could reasonably infer from these facts that Revoner *knew* he had no obligation to repay Inghram because the money

was not a loan but consideration for his interest in the property. The evidence was sufficient to support the conclusion that Revoner did not mistakenly agree to a conveyance of his interest.

5. Section 21350

At trial, Revoner argued that Inghram was a prohibited beneficiary of the 2007 Deed pursuant to section 21350. Section 21350, subdivision (a)(1), provides that a provision of an instrument is invalid when it makes a "donative transfer to," among other persons, "[t]he person who drafted the instrument."[4] Inghram argued, and the trial court held, that section 21350 "addresse[s] the construction of trusts and wills and it does not apply to a deed in this instance." In this instance, we agree with Revoner that the trial court erred, and furthermore, the error requires reversal.

The purpose of section 21350 is to prevent unscrupulous persons from obtaining gifts from elderly persons through undue influence or other overbearing behavior. (*Bank of America v. Angel View Crippled Children's Foundation* (1999) 72 Cal.App.4th 451, 456; *Graham v. Lenzi* (1995) 37 Cal.App.4th 248, 256.) Section 21350 establishes a presumption that a gift to a disqualified person was procured by fraud, menace, duress, or undue influence. (*Estate of Austin* (2010) 188 Cal.App.4th 512, 516.) Before the presumption of invalidity arises, the party asserting invalidity must prove the transferee is one of the disqualified persons listed in the statute. (*Ibid.*) The transferee may rebut the presumption if he or she proves one of the exceptions to invalidity set forth in section 21351. (*Ibid.*)

Section 21351 excepts from invalidity a number of cases, including transfers to relatives and cohabitants of the transferor, transfer instruments reviewed by an independent

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4 Other prohibited transferees under section 21350, subdivision (a) include: (1) relatives, cohabitants, or employees of the drafter; (2) any partner, shareholder, or employee of any law firm in which the drafter has an ownership interest; (3) any person who has a fiduciary relationship with the transferor and who transcribes the instrument or causes it to be transcribed, and relatives, cohabitants, or employees of that fiduciary; and (4) a care custodian of the transferor, and relatives, cohabitants, or employees of that care custodian. (§ 21350, subd. (a)(2)-(7).)

attorney who counsels the transferor and executes a specified certificate, and transfers approved by the court on petition of a conservator. (§ 21351, subds. (a)-(c).) Additionally, subdivision (d) of section 21351 permits a transferee *other than the instrument's drafter* (*id*., subd. (e)(1)) to rebut the presumption of invalidity by showing "upon clear and convincing evidence," but not based on the testimony of the disqualified person, "that the transfer was not the product of fraud, menace, duress, or undue influence'" (*Rice v. Clark* (2002) 28 Cal.4th 89, 97-98).

Section 21350 applies to any donative transfers by "instrument," not only to transfers by wills or other testamentary transfers. (§ 21350, subd. (a); see also *Rice v. Clark, supra*, 28 Cal.4th at pp. 97, fn. 4, 98.) The Probate Code broadly defines an "instrument" as "a will, trust, deed, or other writing that designates a beneficiary or makes a donative transfer of property." (§ 45.)

Accordingly, the trial court erred when it held that section 21350 applied to wills and trusts but *not* deeds. The statute is clear that it applies to any instrument, and the Probate Code is equally clear that instruments include deeds. Our Supreme Court has approved of this reading of the section 21350. (*Rice v. Clark, supra*, 28 Cal.4th at pp. 97, fn. 4, 98.)

This error was prejudicial because it is reasonably probable that, in the absence of the error, the court would have reached a result more favorable to Revoner. (Code Civ. Proc., § 475; *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574, citing *People v. Watson* (1956) 46 Cal.2d 818, 835.) Section 21350 establishes a presumption that a donative transfer to the person who drafted the instrument of transfer is invalid. (§ 21350, subd. (a)(1).) First, there was evidence to support the conclusion that Inghram drafted the 2007 Deed. She testified that she "got the papers prepared" for the 2007 Deed at Kerr's direction, and she has never denied that she drafted the deed when Revoner has made this argument, either in the trial court or on appeal. Second, there was also evidence to support the conclusion that the 2007 Deed was a donative transfer. Inghram testified that Kerr said she wanted Inghram to be a joint tenant because of all the things Inghram and her family had done for Kerr throughout the years. This suggests that Kerr was essentially giving Inghram a gift -- an interest in the subject property without any consideration in return -- and

supports a donative transfer. Further, there was no evidence that Inghram paid Kerr any money, even an nominal amount, in exchange for her joint tenancy. While there does not appear to be much, if any, conflict in the record on these issues, whether Kerr was the drafter and whether the deed was a donative transfer are questions of fact on which the trial court should have ruled (had it not determined that section 21350 does not apply to deeds).

Assuming the transfer to Inghram was invalid, this did not void the entire 2007 Deed, only the provision making Inghram a joint tenant. (§ 21350, subd. (a)(1).) The Probate Code would presume the transfer was made as if Inghram had predeceased Kerr without spouse or issue. (§ 21353.) In other words, the 2007 Deed would have made Kerr and Revoner the sole joint tenants, and upon Kerr's death, Revoner would have been the sole owner of the subject property. (*Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1317 ["A distinctive feature of joint tenancy, as opposed to other interests in land, is the right of survivorship. This means that when one joint tenant dies, the entire estate belongs automatically to the surviving joint tenant(s)."].)

We conclude that the appropriate resolution is to remand the matter to the trial court with directions to determine whether Inghram was a prohibited transferee under section 21350, consistent with the views expressed herein. If the answer is yes, and Revoner became the sole owner of the subject property upon Kerr's death, then the court will need to determine the effect of the 2008 Agreement and Deed, in which Revoner transferred "all of his interest" in the property to Inghram.[5] The trial court may redetermine these issues on

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[5] We requested that the parties present supplemental briefing on this issue. Revoner responded that, assuming he was the sole owner of the subject property upon Kerr's death, the 2008 Agreement should be either rescinded or reformed for a material, *mutual* mistake of fact in that both parties believed Revoner was transferring only a 50 percent interest, as opposed to a 100 percent interest. Because we believe either reformation or rescission on this basis involves questions of fact that the trial court should determine in the first instance, we leave the issue for the court on remand. We have already determined in parts three and four, *ante*, that the trial court did not err in rejecting Revoner's other arguments for voiding the 2008 Agreement. The court need not reconsider these arguments on remand.

remand without a new trial, as the case was fully tried and we see no necessity to take further evidence. (*In re Marriage of Fonstein* (1976) 17 Cal.3d 738, 751 [reversal and remand for the trial court to make new factual determinations on the existing trial record]; *Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 895 [reversal and remand for the trial court to conduct "a de novo review of the evidence" and apply a principle of law in a specified manner].) Nevertheless, the trial court may deem it necessary or advisable to receive additional evidence or briefing from the parties, and we will not preclude it from doing so. (Code Civ. Proc., § 43 ["The Supreme Court, and the courts of appeal, may affirm, reverse, or modify any judgment or order appealed from, . . . or direct a new trial or further proceedings to be had."]; *England v. Christensen* (1966) 243 Cal.App.2d 413, 435 [reversal and remand with directions to the court "to make adequate findings on all issues" based on the evidence then in the record and such additional evidence as it deemed necessary].)

DISPOSITION

The judgment is reversed. On remand, in conformity with the views expressed herein, the trial court shall (1) determine whether Inghram was a prohibited transferee of the 2007 Deed under section 21350; (2) if so, determine what effect, if any, this had on the 2008 Agreement and Deed; and (3) enter judgment accordingly. Appellant shall recover costs on appeal.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.