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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of AZNIV MEGUERIAN and ARA HUNANYAN.	B268831
AZNIV MEGUERIAN, Respondent, v. ARA HUNANYAN, Appellant.	(Los Angeles County Super. Ct. No. LD046786)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Convey, Judge. Affirmed.

Ara Hunanyan, in pro. per., for Appellant.

Law Offices of Rosenthal & Associates, and Lisa F. Rosenthal for Respondent.

Ara Hunanyan appeals from the trial court's order directing the sale of a rental property to finance the parties' litigation in this family law proceeding. The parties do not dispute the sale of an asset is needed to finance their litigation, but disagree which asset should be sold. The trial court did not abuse its discretion in choosing a property. We affirm the order.

PROCEDURAL HISTORY[1]

Azniv Meguerian[2] died on December 15, 2012, while in the process of divorcing Hunanyan. Azniv and Hunanyan were married on February 11, 2000, and they separated on January 3, 2006. On May 29, 2015, Lucine Meguerian and John Meguerian were appointed as the administrators for Azniv's estate in the probate matter and the estate's personal representatives in this matter.

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[1] This court has addressed a number of appeals and writ petitions related to this case. The related matters are: *Hunanyan v. Superior Court of Los Angeles County,* No. B251586, *Kokikian v. Hunanyan,* No. B252475, *Kokikian v. Hunanyan,* No. B262187, *Kokikian v. Hunanyan,* No. B265506, *Hunanyan v. Superior Court of Los Angeles County*, No. B267273, and *Hunanyan v. Superior Court of Los Angeles County et al.*, No. B278668.

[2] Azniv Meguerian is also known as Anna Azniv Meguerian, Azniv Ann Kokikian, and Azniv Hunanyan. For ease of reference, we will refer to the members of the Meguerian family by their first names. To the extent they represent Azniv's estate, we will refer to them collectiviely as Petitioner.

On June 3, 2015, Petitioner moved for attorney fees under Family Code section 2030.[3] Specifically, Petitioner requested the trial court order a rental property in Long Beach be sold and the proceeds used to finance the litigation. Petitioner alleged the community assets were controlled by Hunanyan, who kept all of the rental income from this property. As a result, Petitioner lacked any liquid assets to finance the trial and owed her attorney $25,000 for services rendered. Lucine explained in a declaration that an appraisal of the property estimated $215,000 in equity in the Long Beach property. In a declaration submitted under *In re Marriage of Keech* (1999) 75 Cal.App.4th 860 (*Keech*), Petitioner's counsel opined the matter would be extremely costly and time consuming to litigate because it involved complex financial matters and required her to consider not only family law, but probate law, in litigating the matter. She stated she charged $375 per hour, which she believed was consistent with other attorneys practicing in this field.

The trial court ordered Petitioner's attorney fees request to be continued, noting, "if Petitioner's counsel intends to represent the personal representative(s) in the dissolution case, Substitution(s) of Attorney must be served and filed." A substitution of attorney was filed on August 5, 2015, reflecting Lisa Rosenthal as the attorney for Petitioner.

On September 10, 2015, Hunanyan submitted a written request for attorney fees and costs in the amount of $270,000 to be paid by Lucine. In support of his motion, Hunanyan submitted a property declaration reflecting separate property owned by him worth in excess of $1 million and community or

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[3] All further section references are to the Family Code unless otherwise specified.

quasi-community property in excess of $17 million. He submitted a grant deed showing the Long Beach property was held in his name only. He disclosed he is seeking a loan modification on his property as he had not made at least a year of mortgage payments. He also disclosed the property is encumbered with a $454,000 first lien and a $65,000 second lien, leaving no equity remaining.

In opposition to Petitioner's request for attorney fees, Hunanyan argued Rosenthal failed to properly substitute in as counsel for Petitioner. As a result, any request for attorney fees by Rosenthal was invalid. Hunanyan further argued Petitioner failed to fully disclose all community property. According to Hunanyan, several properties were purchased during the marriage with "straw buyers" to withhold assets from him. Hunanyan argued Petitioner should be forced to sell the undisclosed assets to finance the litigation for both parties rather than the Long Beach property.

The hearing on the parties' separate attorney fees requests was held on September 24, 2015. Petitioner argued for the sale of the Long Beach property as described in her moving papers. She further advised the court that "we have a buyer who is willing to pay close to $900,000 for the property. So there would be a significant income to the respondent for fees for this case." Hunanyan argued the Long Beach property had insufficient equity to finance the litigation, but suggested two other properties to sell—5074 Caltrana and 15959 Basset, both in the San Fernando Valley. Petitioner's counsel advised the court that neither San Fernando Valley property was a community asset. The Basset property was owned by a corporation operated by the heirs, Lucine and John. The Caltrana property was Azniv's

separate property which passed outside of probate and was scheduled to transfer to the heirs because they were on title. Rosenthal noted probate was initiated only for the purpose of this family law litigation and the probate case was on hold pending this case.

The trial court ordered the sale of the Long Beach property with the proceeds to fund a $50,000 advance to each party. The court found "the weight of the evidence more persuasive that there is enough equity in the Long Beach property to fund the attorneys fees requested by both parties, to initially retain counsel and experts to start preparing this case." The trial court reasoned, "The issues are very distinct. It is characterization and division of properties and attorney fees. But you can't get there because you have some serious tracing issues, complicated tracing issues. This makes it complex. This makes it necessary for both sides to have expert lawyers, experienced lawyers in these matters and if necessary, to retain financial experts. And an award of attorney fees under Family Code section 2030 and 2032 is not final. It can be augmented. Both sides need access to resources to be able to start preparing this case for the trial that you need to have to finish it. There are sufficient assets."

Hunanyan moved for reconsideration on October 23, 2015. The trial court denied his motion for failure to show new facts or law under Code of Civil Procedure section 1008. He then appealed from the court's attorney fees order, which is appealable. (*Askew v. Askew* (1994) 22 Cal.App.4th 942, 964, fn. 37.)

DISCUSSION

It appears undisputed both parties require liquid assets to pay for attorney fees and costs in this complex matter. From what we can discern, the only dispute concerns which property should be sold to finance the litigation. We find the trial court did not abuse its discretion in choosing the Long Beach property to be sold rather than the ones suggested by Hunanyan.

I. Applicable Law

"'"California's public policy in favor of expeditious and final resolution of marital dissolution actions is best accomplished by providing at the outset of litigation, consistent with the financial circumstances of the parties, a parity between spouses in their ability to obtain effective legal representation."'" (*Keech, supra*, 75 Cal.App.4th at p. 866, quoting *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 41, fn. 12.) Sections 2030 and 2032 attempt to effectuate this public policy by setting forth the trial court's authority to make attorney fee orders during or after the litigation.

Section 2030, subdivision (a)(1), directs the trial court to "ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." "[T]he purpose of section 2030 is not the redistribution of money from the greater income party to the lesser income party. Its purpose is parity: a fair hearing with two sides equally represented. The idea is that both sides should

have the opportunity to retain counsel, not just (as is usually the case) only the party with greater financial strength." (*Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 251, italics omitted (*Alan S.)*.) "The vicissitudes of family law proceedings dictate that trial judges must have maximum flexibility in ensuring that each party has the means to pay for counsel. To hold otherwise would frustrate those policies." (*In re Marriage of Hobdy* (2004) 123 Cal.App.4th 360, 371.)

Thus, section 2031, subdivision (b), permits a trial court to award attorney fees "without notice by an oral motion" at the time of the hearing of the cause on the merits. The trial court must determine what award would be "just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a).) "In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320."[4] (§ 2032, subd. (b).) Payment of an award under section 2030 may be ordered "from any type of property, whether community or separate, principal or income." (§ 2032, subd. (c).)

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[4] The parties' "circumstances" as described in section 4320 include assets, debts and earning ability of both parties, ability to pay, duration of the marriage, and the age and health of the parties. Further, "[i]n assessing one party's relative 'need' and the other party's ability to pay, the court may consider all evidence concerning the parties' current incomes, assets, and abilities, including investment and income-producing properties." (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1167.)

While the trial court has considerable latitude in fashioning or denying an attorney fees award, its decision must reflect an exercise of discretion and a consideration of the appropriate factors as set forth in sections 2030 and 2032. (*Alan S., supra,* 172 Cal.App.4th at p. 242.) The trial court's ruling on a request for attorney fees is subject to review for an abuse of discretion. (*Keech, supra,* 75 Cal.App.4th at p. 866.) We will not reverse such a ruling absent a showing that "no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order." (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 974-975.)

II. Analysis

Here, the trial court's order ensured the parties had access to funds to present his or her case adequately as required under sections 2030 and 2032. To that end, the trial court relied on subdivision (c) of section 2032, which granted it the flexibility and authority to order the fee award to be made "from any type of property, whether community or separate, principal or income." (§ 2032, subd. (c).) We conclude the trial court properly exercised its discretion.

The parties agree the litigation should be funded by the sale of an asset or assets and that the trial court has authority to order such a sale. The parties merely disagree which asset should be sold—the Long Beach property, the Caltrana property, or the Basset property. The record supports the trial court's decision to order the sale of the Long Beach property because there is no question the trial court has jurisdiction over it. Hunanyan contends the Long Beach property is his separate property while Petitioner contends it is community property. In either case, it unquestionably falls within the parameters of

section 2032, subdivision (c), in that it is "community or separate, principal or income." As to the Caltrana or Basset properties, it is disputed whether these properties are "community or separate" or entirely owned by third parties. If the property is owned by Lucine, John, or anyone else and not the estate, the trial court has no jurisdiction to order its sale. Here, Petitioner advised the trial court in the reply papers and at the hearing that neither property is available for sale under these circumstances because they are owned by the heirs or by a third party.

Further, the record supports a finding there is sufficient equity in the Long Beach property to finance the litigation. Respondents submitted an appraisal for the Long Beach property which suggested a listing price of $600,000 and a "strike price" of approximately $575,000. Rosenthal also advised the trial court there was a buyer who was willing to pay "close to" $900,000 for the property.[5] Hunanyan himself acknowledged he failed to pay the mortgage on the property for at least one year and there is nothing in his income statement to show he would be able to pay the mortgage in the future, raising the possibility of losing it through foreclosure. Given these facts, it is not unreasonable for the trial court to discredit a valuation submitted by Hunanyan showing little or no equity in the property. We observe no abuse of discretion in the trial court's order.

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[5] While Rosenthal's statement was not evidence, the law imposes the highest standards of truthfulness on attorneys, who are officers of the court, and does not countenance fraudulent statements by attorneys in any context. (Bus. & Prof. Code, § 6068, subd. (d); see *Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2003) 107 Cal.App.4th 54, 69-74.)

Hunanyan nevertheless paints a portrait of himself as "able just to break even his income and expenses" while Petitioner fraudulently hides millions of dollars worth of community assets from him and the trial court. The determination of whether community assets have been hidden or fraudulently transferred, however, is the purpose of a full trial on the merits. It is not appropriately determined in a hearing for attorney fees.[6] Moreover, the trial court considered the parties' financial circumstances in making its order. It found, "[t]he income and expense declaration of the respondent [Hunanyan] shows that he is spending on expenses about everything that he's taking in income. And he is doing this with no consumer debt according to his most recent income and expense declaration. So he has no access to resources. The only access to resources are sale of assets. The estate is not called upon to have the personal representatives pledge their own property and value and worth to fund the litigation." It is undisputed neither Hunanyan nor the estate have sufficient income to fund their own litigation and the only way to pay any attorneys or experts is through the sale of an asset. The trial court has very broad discretion in ordering the

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[6] Hunanyan contends the trial court erred by failing to receive live testimony in contravention of Code of Civil Procedure section 217. Hunanyan confuses the requirement to receive live testimony that is offered by the parties with a motion to compel attendance or testimony at a hearing. It does not appear Hunanyan moved to compel John or Lucine's testimony or appearance. Moreover, section 217 only requires the court to receive "relevant" testimony which is "within the scope of the hearing." (§ 217, subd. (a).) As discussed above, the testimony which Hunanyan seeks to compel from Lucine and John about hidden assets is not within the scope of the hearing.

payment of attorney fees and costs. Indeed, "[n]either the subdivision nor any other authority prohibits the trial court from making orders that require a party to borrow money under appropriate circumstances." (*In re Marriage of Hofer* (2012) 208 Cal.App.4th 454, 460.)

Hunanyan also attacks Petitioner's entitlement to fees, arguing her counsel did not file a timely or effective substitution of attorney. According to Hunanyan, Petitioner is not entitled to any attorney fees incurred prior to August 5, 2015, when Rosenthal filed a substitution of attorney. Hunanyan has provided no authority for this position. Instead, "[a]ttorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding." (§ 2030, subd. (b).) Thus, fees may be awarded for services rendered by an attorney who has not yet appeared before the court.

Hunanyan next argues the trial court failed to issue a statement of decision despite his request for one on September 23, 2015. The trial court orally issued its statement of decision as authorized under Code of Civil Procedure section 632, which provides a statement of decision may be made on the record in the presence of the parties if the trial is concluded within one calendar day. Here, the trial court clearly stated on the record, "I am going to rule on the case now." It then proceeded to provide the factual and legal basis for its decision. Nothing more is required.

Finally, Hunanyan contends the trial judge, Hon. Michael Convey, was biased, as evidenced by "the errors the Court made: failed to issue statement of decision, the order was made on false facts, there was no 'good cause' to exclude P[ersonal]

R[epresentatives]." In particular, Hunanyan accuses Judge Convey of conducting secret ex parte communications with the personal representatives or Rosenthal and of advocating for Petitioner. However, Hunanyan presents no evidence of such conduct beyond Judge Convey's comment that he excused John and Lucine from appearing at the hearing for attorney fees.

A judge's impartiality is evaluated by an objective, rather than subjective, standard. The question becomes whether """a reasonable man [or woman] would entertain doubts concerning the judge's impartiality.""" (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 246, disapproved on other grounds by People v. Freeman (2010) 47 Cal.4th 993, 1006, fn. 4.); Code Civ. Proc., § 170.1, subd. (c).) Our power to direct that a different judge hear the matter on remand should be "used sparingly and only where the interests of justice require it." (*People v. Gulbrandsen* (1989) 209 Cal.App.3d 1547, 1562.) It is apparent that Hunanyan's contention of bias rests solely on his disagreement with Judge Convey's rulings. That is not a basis for a finding of bias. (*See Keating v. Superior Court of San Francisco* (1955) 45 Cal.2d 440, 443-444 [failure to accept party's version of facts does not show judge is biased or prejudiced against him]; *Kreling v. Superior Court of Los Angeles County* (1944) 63 Cal.App.2d 353,359 ["A judge is not disqualified to again hear a case because of an expression of opinion by him upon a question of law."].)

DISPOSITION

The order regarding attorney fees, issued on September 24, 2015, is affirmed. Respondent is awarded costs on appeal.

SORTINO, J.*

We concur:

FLIER, Acting P.J.

GRIMES, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.