Filed 6/24/19 Estate of Chatelain CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Estate of JAMES WILLIAM CHATELAIN, Deceased. SUSAN K. ASHABRANER, Petitioner and Appellant, v. JILL CHATELAIN, Objector and Respondent.	B285456 c/w B288714 (Los Angeles County Super. Ct. No. BP157870)

APPEAL from orders of the Superior Court of Los Angeles County. Angela Villegas, Judge. Affirmed.

Law Office of Susan K. Ashabraner and Susan K. Ashabraner for Petitioner and Appellant.

Warshaw & Pope and Jaquelynn C. Pope for Objector and Respondent.

This appeal concerns the distribution of assets from the estate of James William Chatelain (James).[1] Petitioner and appellant Susan Ashabraner (Susan), challenges the probate court's orders denying her petitions for a determination of her entitlement to certain assets in the estate. We affirm the orders.

BACKGROUND

The parties

James died on September 22, 2014. He was predeceased by his wife of 28 years, Janet Chatelain (Janet), who died on June 23, 2013. Both James and Janet died intestate. They did not have any children.

Susan is Janet's sister. Respondent Jill Chatelain (Jill) is James's sister and the administrator of his estate. Jill and Susan are the heirs to James's estate.

Hyatt pension plans

James was employed for many years by the Hyatt Corporation (Hyatt), which provided him with a retirement savings account (RSA) and a deferred compensation plan (DCP). The DCP is a "top hat plan," or one that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees." (29 U.S.C. § 1101(a)(1).) The plan documents for both the DCP and RSA contain an anti-alienation clause.[2]

---

[1] We refer to the persons involved in this action by their first names because several of them share the same surname.

[2] Paragraph 13.9(a) of the RSA plan states: "Except as provided in subsections (b) and (c), no part of the Trust Fund shall be liable for the debts, contracts or engagements of any

At the time of James's death, Janet was listed as the beneficiary of the RSA, and the DCP had no designated beneficiary. Both the DCP and RSA plans provide that when there is no valid beneficiary designation in effect upon the death of the participant, and no surviving spouse or surviving children, then the beneficiary will be the legal representative of the participant's estate. At James's death, the RSA account was

---

Participant, his Beneficiaries or successors in interest, or be taken in execution by levy, attachment or garnishment or by any other legal or equitable proceeding, while in the hands of the Trustee, nor shall any such person have any right to alienate, anticipate, commute, pledge, encumber or assign any benefits or payments hereunder in any manner whatsoever, except to designate a Beneficiary as provided in the Plan."

Paragraph 13.6 of the DCP states: "**Non-Alienation.** Benefits payable to any person under the Plan may not be voluntarily or involuntarily assigned, alienated, pledged or subject to attachment, anticipation, garnishment, levy, execution or other legal or equitable process except to the extent required by a domestic relations order that is issued under a state domestic relations law (including a community property law) that is not preempted by ERISA or except by will or the laws of descent and distribution. Notwithstanding any other provision of the Plan to the contrary, such domestic relations order may permit distribution of the entire vested portion of the Participant's Account which is payable to the Participant's spouse or former spouse, in a lump sum payment as soon as practicable after the Plan Administrator receives an acceptable order, without regard to whether the Participant would himself be entitled under the terms of the Plan to withdraw or receive a distribution of such amount at that time."

valued at $671,197.51 and the DCP account was valued at $697,737.29.

Life insurance proceeds

On April 26, 2011, James received a check in the amount of $68,462.80 for the proceeds of his father's John Hancock life insurance policy. That same day, James deposited $68,000 in a GE account, #3428, that he held in his name only.

On May 16, 2011, James received a check in the amount of $67,483.62 for the proceeds of his father's Sun Life Financial life insurance policy. He deposited that amount in the GE account #3428 on May 25, 2011. On June 23, 2013, the date of Janet's death, the balance in the GE account #3428 was $236,477.02.

James's earnings after Janet's death

James continued to work for Hyatt after Janet's death until his own death on September 22, 2014. Hyatt automatically deposited James's net earnings (after deductions for taxes and contributions to his pension plans) into an account at EverBank held jointly in both James's and Janet's names. The net earnings deposited in EverBank after Janet's death totaled $94,793.88. James periodically transferred funds from the EverBank account to GE account #3428.

Household furnishings

Jill submitted a verified statement of interest in which she declared that no written record of title exists for James's and Janet's household furnishings. For purposes of the inventory and appraisal, Jill estimated the value of the household furnishings at $15,000.

PROCEDURAL HISTORY

Susan filed two petitions for a court determination of her entitlement to assets in James's estate. In the first petition,

Susan sought a court order that she was entitled to half of the DCP account. Susan's second petition sought an order that she was entitled to half of the RSA account and half of the intangible assets in the estate, except for the DCP account that was the subject of her prior petition, two checks from Hyatt in the amounts of $34,490.23 and $29,164.03 that were issued to Jill after James's death, and James's personal effects.

Jill opposed both petitions. Jill stated, however, that because of James's and Janet's long-term marriage, she assumed for purposes of distribution that except for four specified assets, the intangible property in James's estate and the couple's residence are community property that will be divided equally between Susan and Jill. The four assets at issue are: (1) James's RSA and DCP accounts, (2) proceeds from James's father's life insurance policies, (3) James's earnings after Janet's death, and (4) the household furnishings.

Susan's first petition was heard on July 13, 2017. The probate court issued its ruling on July 27, 2017, concluding that Susan was not entitled to any distribution from James's DCP account. An order incorporating the probate court's July 27, 2017 ruling was filed on August 28, 2017.

Susan's second petition was heard on January 29, 2018. In its February 27, 2018 ruling, the probate court concluded that Susan was not entitled to any distribution from James's RSA account. The probate court further concluded that Susan was not entitled to James's earnings after Janet's death, the insurance proceeds from James's father, James's intangible personal property, or any of the household furnishings.

This appeal followed.

DISCUSSION

I. Applicable law and standard of review

Susan's claim to the disputed property in James's estate is based on Probate Code section 6402.5. That statute provides that when a decedent dies within five years of a predeceased spouse, and there are no children, the heirs of the predeceased spouse may claim from the decedent's estate property that is attributable to the predeceased spouse. (Prob. Code, § 6402.5, subd. (b);[3] *Estate of Nereson* (1987) 194 Cal.App.3d 865, 870.)

In general, property that is attributable to the predeceased spouse is property that was either community property with a written record of title at the time of the predeceased spouse's death, or the predeceased spouse's separate property. (Prob. Code, § 6402.5, subd. (e);[4] *Estate of Adams* (1955) 132 Cal.App.2d

---

[3] Probate Code section 6402.5, subdivision (b) states in relevant part: "For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows: [¶] . . . [¶] (3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240."

[4] Probate Code section 6402.5, subdivision (e) states: "For the purposes of disposing of property pursuant to subdivision (b), 'personal property' means that personal property in which there

190, 203.) When, as is the case here, "the surviving spouse dies intestate, the presumption is that all property in his estate is his sole and separate property, and the one claiming it to be community must assume the burden of proving what portion of that estate was in fact the community property of the two parties at the time of the death of the predeceased spouse. This does not mean that such claimant must prove that the identical property did not change form after the death of the predeceased spouse [citation], but it does mean that the burden of tracing the property into the estate of the surviving spouse is on the ones claiming it to be community property." (*Estate of Adams, supra*, at p. 203.)

The probate court's characterization of property as community property or separate property is ordinarily a factual determination that will be upheld on appeal if supported by substantial evidence. (*Estate of Nereson, supra,* 194 Cal.App.3d at p. 873.) De novo review applies, however, when "resolution of 'the issue of the characterization to be given (as separate or community property) . . . requires a critical consideration, in a factual context, of legal principles and their underlying values . . . .' [Citations.]" (*In re Marriage of Rossin* (2009) 172 Cal.App.4th 725, 734.)

II. RSA and DCP accounts

A. ERISA preemption and California community property law

The parties agree that James's RSA and DCP accounts were acquired and funded during James's and Janet's marriage. Under California law, property acquired during marriage is

---

is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more."

community property unless it is separate property or otherwise excepted by statute. (Fam. Code, §§ 760, 770.)

Both the RSA and DCP plans are subject to the federal Employee Retirement Income Security Act (29 U.S.C. §1001 et seq.) (ERISA).[5] ERISA mandates that every pension plan subject to its provisions provide a vested plan participant "who does not die before the annuity starting date" benefits in the form of a joint and survivor annuity, which must include an annuity payable to the non-employee spouse. The non-employee spouse's annuity must be no less than 50 percent of the employee's annuity. (29 U.S.C. § 1055(a).) Congress's purpose in enacting this provision was "to ensure a stream of income to surviving spouses." (*Boggs v. Boggs* (1997) 520 U.S. 833, 843 (*Boggs*).)

ERISA also contains an expansive preemption provision that states that it "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. (29 U.S.C. § 1144(a).) As we discuss, ERISA preempts Susan's claims based on Janet's community property interest in James's pension and deferred compensation benefits.

1. *Boggs*

In *Boggs*, the United States Supreme Court held that ERISA preempts state community property laws that allow a nonparticipant spouse to make a testamentary transfer of that spouse's interest in undistributed pension plan benefits. In that

---

[5] The RSA is subject to all of ERISA, whereas the DCP is exempt from certain ERISA provisions, but is subject to the statute's provisions governing administration and enforcement. (29 U.S.C. §§ 1101-1114, 1131-1145.)

case, the predeceased wife (Dorothy) of the plan participant (Isaac) devised by will to their sons her community property interest in Isaac's undistributed pension benefits. (*Boggs, supra*, 520 U.S. at pp. 836-837.) After Dorothy's death, Isaac remarried Sandra and then retired and collected his pension benefits. Upon Isaac's death, the sons filed an action to enforce Dorothy's bequest and to recover a portion of the pension benefits paid to Isaac and survivor benefits paid and payable to Sandra. (*Id.* at p. 837.) The Fifth Circuit ruled that under Louisiana law, Dorothy had a community property interest in Isaac's pension plan benefits that she could devise to the sons, and that ERISA did not preempt that state law. (*Id.* at pp. 837-838.)

The Supreme Court reversed, holding that the sons were not entitled to the retirement benefits because ERISA preempted the state community property law on which the sons' claim was based. (*Boggs, supra,* 520 U.S. at pp. 842, 847.) The court in *Boggs* reasoned that ERISA's purpose of ensuring "the economic security of surviving spouses would be undermined by allowing a predeceasing spouse's heirs and legatees to have a community property interest in the survivor's annuity" and that "[i]n the face of this direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand." (*Id.* at p. 844.)

The court in *Boggs* further concluded that the sons were not entitled to a share of Isaac's retirement benefits because neither Dorothy nor the sons were "beneficiaries" under ERISA.[6] The court explained that "ERISA confers beneficiary status on a

---

[6] A "beneficiary" is defined under ERISA as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." (29 U.S.C. § 1002(8).)

nonparticipant spouse or dependent in only narrow circumstances delineated by its provisions." (*Boggs, supra,* 520 U.S. at p. 846.) One such provision (29 U.S.C. § 1055(a)) requires covered pension plans to provide a surviving spouse annuity. Another provision (29 U.S.C. § 1056) "recognize[s] certain pension plan community property interests of nonparticipant spouses and dependents" by authorizing a QDRO, "a type of domestic relations order that creates or recognizes an alternate payee's right to, or assigns to an alternative payee the right to, a portion of the benefits payable with respect to a participant under a plan. [Citation.]" (*Boggs*, at p. 846.) The Supreme Court concluded that "[a]part from these detailed provisions, ERISA does not confer beneficiary status on nonparticipants by reason of their marital or dependent status." (*Id.* at p. 847)

The court in *Boggs* reasoned that ERISA's "surviving spouse annuity and QDRO provisions, which acknowledge and protect specific pension plan community property interests, give rise to the strong implication that other community property claims are not consistent with the statutory scheme. ERISA's silence with respect to the right of a nonparticipant spouse to control pension plan benefits by testamentary transfer provides powerful support for the conclusion that the right does not exist." (*Boggs, supra*, 520 U.S. at pp. 847-848.) The Supreme Court concluded that the sons, whose claim was based solely on Dorothy's attempted testamentary transfer of her community property interest in pension plan benefits, were not entitled to a share of those benefits. (*Id.* at p. 848.)

The court in *Boggs* found further "specific and powerful reinforcement" of Congress's intent "to pre-empt . . . nonbeneficiary, nonparticipant interests in the retirement plans"

in ERISA's anti-alienation provision, which prohibits "assignment or alienation" of plan benefits. (*Boggs, supra,* 520 U.S. at p. 851.) ERISA's implementing regulations define an "assignment or alienation" as "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.' [Citation.]" (*Ibid.*) The court in *Boggs* concluded that Dorothy's testamentary transfer of her community property interest in the plan was an "assignment or alienation" prohibited under ERISA. (*Ibid.*)

2. *Branco*

The Supreme Court's holding in *Boggs,* which concerned testamentary transfers by a predeceased nonparticipant spouse, was extended by the Ninth Circuit to apply to intestate heirs in *Branco v. UFCW-N. Cal. Emplrs. Joint Pension Plan* (9th Cir. 2002) 279 F.3d 1154 (*Branco*). *Branco* concerned pension benefit claims by the intestate heirs of a predeceased nonparticipant spouse. In *Branco*, the plan participant, Branco, and his ex-wife, Anna, divorced before Anna's death. At the time of the divorce, the parties stipulated to a court order that granted Anna a 47 percent share of Branco's pension benefits. Anna died before Branco became eligible for benefits, and the trial court concluded that Anna's share of the pension should be paid to her intestate heirs pursuant to the stipulated court order. (*Id.* at pp. 1157-1158.) The Ninth Circuit reversed, holding that the entire benefit should be paid to Branco because Anna's death divested

her of any rights as a qualified beneficiary under ERISA. (*Id.* at p. 1158.)[7]

B. Susan has no claim to the RSA or DCP accounts

The courts' holdings in *Boggs* and *Branco* apply here and bar Susan's claim to any portion of the RSA and DCP accounts. Janet's death divested her of any interest in James's undistributed pension and deferred compensation benefits. (*Branco, supra,* 279 F.3d at p. 1158.) Susan has no claim to those benefits because under Probate Code section 6402.5, she is entitled only to assets in James's estate that are attributable to Janet. Neither the RSA account nor the DCP account are attributable to Janet.

That Susan's claims are premised on her status as James's heir, and not Janet's, does not alter the result. Susan's entitlement to James's pension benefits under Probate Code section 6402.5 encompasses only property attributable to Janet, i.e., Janet's community property. (Prob. Code, § 6402.5, subd. (e).) As a matter of law, ERISA preempts Susan's claims based on Janet's community property interest. (*Boggs, supra,* 520 U.S. at pp. 847-848; *Branco, supra,* 279 F.3d at p. 1158.)

Susan's argument that ERISA does not preempt her claim for benefits that have already been distributed to James's estate was rejected by the Supreme Court in *Boggs*: "It does not matter that respondents have sought to enforce their rights only after the retirement benefits have been distributed since their asserted rights are based on the theory that they had an interest in the

---

[7] The court in *Branco* noted that the stipulated court order enforced by the trial court did not qualify as a QDRO because a QDRO could not apply to a deceased spouse. (*Branco, supra*, 279 F.3d at p. 1158.)

undistributed pension plan benefits. Their state-law claims are pre-empted." (*Boggs, supra,* 520 U.S. at p. 854.) Susan's claims are likewise preempted by ERISA. (*Ibid.*)[8]

III. Life insurance proceeds

Under California law, inheritances received during a marriage are separate property. The California Constitution states: "Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property." (Cal. Const., art I, § 21.) Family Code section 770 similarly provides that the "[s]eparate property of a married person includes . . . [¶] . . . [¶] [a]ll property acquired by the person after marriage by gift, bequest, devise, or descent." (Fam. Code, § 770, subd. (a)(2).)

Substantial evidence supports the probate court's determination that the proceeds from James's father's life insurance policies were James's separate property. The evidence shows that James received two checks in the amounts of $68,462.80 and $67,483.62, payable to him as the beneficiary under his father's life insurance policies, that James deposited

---

[8] In her respondent's brief, Jill discusses an argument Susan made in the probate court -- that the anti-alienation provision in James's DCP, which excepts transfers "by will or the laws of descent and distribution," allows Janet's community property interest in James's deferred compensation benefits to pass to Susan under the laws of intestate succession. Because Susan did not raise this argument on appeal, we need not address it. (*Diekmeyer v. Redevelopment Agency of Huntington Beach* (2005) 127 Cal.App.4th 248, 260 ["appellant's failure to raise an argument in its opening brief waives the issue on appeal"].) The anti-alienation provision does not apply, in any event. Janet made no testamentary transfer, and her death divested her of any rights as a qualified beneficiary under ERISA. (*Branco, supra*, 279 F.3d at p. 1158.)

$68,000 into GE account #3428 on May 17, 2011, that he deposited $67,483.62 into that same account on May 25, 2011, and that an amount greater than the amount of the two checks remained in that account at the time of Janet's death.

Susan argues that Jill failed to prove that the two insurance payments were James's separate property, and that Jill failed to trace those funds into James's estate after they were commingled with other community property funds. Susan claims she provided evidence that the $68,462.80 John Hancock Insurance check was initially deposited in a OneWest Bank account #6943, held jointly in both James's and Janet's names, that contained community property funds. Susan further claims the GE account #3428 also contained community property funds.

The proceeds James received as the beneficiary under his father's life insurance policies were his separate property. (Fam. Code, § 770, subd. (a)(2).) The general presumption that property acquired during marriage is community property unless traceable to a separate property source does not apply to property acquired by gift or inheritance. (See *In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 289-290.) Moreover, there is a presumption that property in the estate of a surviving spouse is the separate property of the surviving spouse. (*Estate of Luke* (1987) 194 Cal.App.3d 1006, 1019; *Estate of Adams, supra*, 132 Cal.App.2d at p. 203.) Susan bore the burden of proving that the life insurance proceeds were community assets. (*Estate of Luke*, at p. 1019.) She did not meet that burden.

The probate court did not err by concluding that Susan was not entitled to any of the life insurance proceeds.

IV. James's earnings after Janet's death

Substantial evidence supports the probate court's finding that $88,446.74 of James's earnings after Janet's death was James's separate property. James's pay stubs from Hyatt showed that his net earnings after Janet's death totaled $94,793.88. Bank statements showed that after Janet's death, Hyatt direct deposited James's net earnings totaling $94,793.88 into an EverBank account James had held jointly with Janet. The EverBank statements also showed that James transferred funds totaling $75,050 from the EverBank account to his GE account #3428. A letter from EverBank confirmed the final balance in James's account on the date of his death.

The probate court based its determination that Jill was entitled to $88,446.74 of James's earnings after Janet's death on the following calculations: to determine the amount of money in the estate that James earned after Janet's death, the court added the final balance in the EverBank account to the $75,050 that James had transferred from EverBank to GE account #3428, then deducted from that total the EverBank balance at the date of Janet's death. Substantial evidence supports the probate court's determination that the resulting amount, $88,446.74, constituted James's earnings after Janet's death, and that Jill was entitled to that amount as James's separate property.

We reject Susan's argument that the Hyatt deposits into EverBank and James's $75,050 transfer from EverBank to GE account #3428 resulted in commingling of separate and community assets and that she is entitled to a portion of the EverBank and GE accounts. As discussed, there is a presumption that property in the estate of a surviving spouse is the separate property of the surviving spouse. (*Estate of Luke,*

supra, 194 Cal.App.3d at p. 1019; *Estate of Adams, supra*, 132 Cal.App.2d, at p. 203.) Susan accordingly had the burden of proving that any purportedly commingled funds in the EverBank and GE accounts were community assets. (*Estate of Luke*, at p. 1019.) She did not do so.

V. Household furnishings

Susan does not dispute that there is no written record of title for any of the household furnishings she claims are community assets, and that the absence of such a record was the basis for the probate court's denial of her claim. Instead, she argues that the order denying her claim contravenes an August 25, 2015 stipulated order for preliminary distribution of James's and Janet's personal effects.

The August 25, 2015 stipulated order requires the parties and their counsel to "meet and confer in good faith regarding the disposition of personal property of James Chatelain and Janet Chatelain." The stipulated order further provides "[t]hat Susan . . . shall be permitted to pick up the agreed-upon personal property on or before October 1, 2015"; and that if the parties "disagree on the disposition of any personal property items that belong to James . . . and/or Janet . . . , the parties and their counsel agree to continue to meet and confer regarding the disposition of such items."

Pursuant to the stipulated order, on October 1, 2015, Susan took possession of 75 boxes of Janet's personal effects, including jewelry, clothing, and exercise equipment, and signed a receipt for those items. The parties met and conferred but could not reach agreement on disposition of the household furnishings.

The stipulated order does not accord Susan the right to any of the household furnishings. The probate court did not err by denying Susan's claim to those assets.

DISPOSITION

The probate court orders are affirmed. Jill shall recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT