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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

Estate of ELVA VEGA, Deceased.	B287748
MICHAEL MORONES, Petitioner and Respondent, v. GEORGINA VEGA, as Administrator, etc., Objector and Appellant.	(Los Angeles County Super. Ct. No. BP165977)

APPEAL from a judgment of the Superior Court of Los Angeles County, Clifford Klein, Judge. Reversed.

Greenberg Traurig, Scott D. Bertzyk for Appellant.

Horspool & Horspool and J. David Horspool for Respondent.

INTRODUCTION

Porfirio Morones died intestate, and his wife Elva Vega died intestate shortly thereafter. During administration of Vega's estate, Morones's son from a prior marriage successfully petitioned the probate court for an order distributing to himself all assets in Vega's estate attributable to his father, including the proceeds from the sale of a house and the proceeds of his father's life insurance policy. On appeal, Vega's sister challenges the distribution order and the court's denial of her request for a trial continuance.

We affirm the judgment as to the proceeds from the house's sale and reverse the judgment as to the life insurance proceeds.

FACTUAL AND PROCEDURAL HISTORY

A. Morones' and Vega's Estates and Survivors

Morones and his first wife, Faulkner, married in 1969 and divorced by 1972. During their marriage, they purchased a house located at 11159 Jerry Place in Cerritos, California (the Jerry Place house). The couple had one child: respondent Michael Morones. When divorcing, Morones and Faulkner entered a property settlement agreement. Morones bought out Faulkner's interest in the Jerry Place house; afterwards, Morones individually held title to the house until his death in September 2014. After their divorce, Morones and Faulkner continued to jointly hold a Bank of America combined interest checking and money market savings account (the Joint Account).

In 1997, Morones married Vega. Morones and Vega remained married for approximately seventeen years, until Morones's death. Vega and Morones lived in the Jerry Place

house throughout their marriage, and took out loans secured by the house.

Morones worked as a grocery clerk for nearly 40 years. When he retired, he began receiving monthly pension payments. As of at least December 2013, Morones's pension payments and social security payments were directly deposited into the Joint Account. After retiring, Morones worked part-time as an event coordinator, with gross monthly earnings of $2500. Vega worked off-the-books sporadically during the marriage.

Morones purchased a life insurance policy in December 2000, initially naming Michael[1] as its beneficiary. In 2011, Morones removed Michael and named Vega the policy's sole beneficiary. Since 2011, the premiums for Morones's policy were paid from the Joint Account. Prior to 2011, the premiums were paid from a Wells Fargo Bank checking account owned by Morones.

Upon his death, Morones's life insurance benefits were paid out to Vega as the policy's designated beneficiary. Vega died 10 months after Morones, in July 2015. Both Morones and Vega died intestate. Morones was survived by his only child, Michael. Vega was survived by two sisters: Georgina Vega and appellant Doris Saunders (executor of Vega's estate).[2]

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[1] Because Michael and his father share the same last name, we will refer to him as Michael in this opinion.

[2] Doris Saunders died during the course of the appeal. On September 23, 2019, the probate court appointed Georgina Vega as personal representative of the estate.

B. Administration of Morones's Estate

Elva Vega originally served as the personal representative of Morones's estate, but died prior to completion of the estate's administration. Michael succeeded Vega as the personal representative of his late father's estate. Michael's petition for settlement of Morones's estate stated that "[t]he whole of the estate is the decedent's separate property." The record does not reflect any opposition or objection to Michael's petition.

In January 2015, Michael sold the Jerry Place house. At close of escrow, Michael (in his capacity as administrator of Morones's estate) received a check for $419,808.25. As of September 2016, after payment of administration costs and other fees, Morones's estate amounted to $416,781.34 in cash assets. Pursuant to Probate Code[3] sections 6401 and 6402, the court's May 2017 order directed that Morones's estate assets, after payments of administration costs and reimbursements, be distributed 50 percent to Michael (Morones's only surviving heir), and 50 percent to Saunders as Vega's estate's personal representative.[4] The order stated that the estate assets to be distributed consisted "entirely of separate property of the decedent [Morones]." Morones's life insurance policy proceeds

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[3] All statutory references are to the Probate Code.

[4] Having survived Morones, it is irrelevant for estate distribution purposes that Vega died prior to the completion of Morones's estate's administration. Probate Code section 11801, subdivision (a). Vega's distribution from Morones's estate was properly directed to Saunders, as the personal representative of Vega's estate. (Prob. Code, § 11802, subd. (a).)

were not part of Morones's estate, and were not subject to probate.

C. Administration of Vega's Estate

In August 2015, Saunders filed a petition for probate of Vega's estate. As of October 2015, Vega's estate consisted of a used car, and $150,171.63 received from Morones's life insurance policy.

1. Michael's Petition for Distribution Pursuant to Section 6402.5

In March 2017, Michael petitioned for an order distributing to himself the life insurance proceeds remaining in Vega's estate, as well as Vega's estate's distribution from Morones's estate. Michael's petition claimed (1) all property in Morones's probate estate, including the Jerry Place house, had been Morones's separate property before his death; and (2) all property in or to be distributed to Vega's estate, including half of the proceeds from the Jerry Place house sale and all of the proceeds from Morones's life insurance policy, was attributable to Morones. Therefore, Michael claimed his exclusive entitlement to these assets under Section 6402.5.

Saunders objected to and opposed Michael's petition, arguing Section 6402.5 did not apply to either the proceeds from the Jerry Place house sale or the life insurance proceeds Vega received upon Morones's death. The opposition admitted that all of the property in Morones's probate estate, including the Jerry Place house, was Morones's separate property.

2. Trial Setting and Saunders's Ex Parte Application for Trial Continuance

After multiple continuances, the court scheduled a trial setting conference on Michael's petition for September 15, 2017. In early September 2017, Saunders permitted her counsel to withdraw and began to represent herself. At the September 15 hearing, the court set trial for October 12, 2017. Saunders appeared telephonically at the hearing and did not object to the trial date.

Ten days before trial, Saunders asked Michael's counsel to agree to a brief continuance so that she could be represented by new counsel at trial. Michael refused, and Saunders applied ex parte for a continuance to enable her to retain new counsel.

3. Denial of Continuance and Trial Proceedings

The court denied Saunders's application—noting the age of the case, Saunders's failure to object at the trial setting conference, and the difficulty of rescheduling before the end of the year—and proceeded with the trial.

Both the ex parte hearing and trial took place on October 12. Michael and his mother testified regarding Morones's employment, retirement, bank accounts, and house. Saunders testified regarding Vega's employment and Vega and Morones's loans secured by the house. Neither party requested a statement of decision.

4. Ruling on Michael's Petition

On November 8, 2017, the court issued a minute order declaring Michael the intestate heir of Vega's estate for the proceeds from the sale of the Jerry Place house and the

remaining proceeds of Morones's life insurance policy. The order held sufficient evidence established that the house and the insurance policy were each Morones's separate property; accordingly, under Section 6402.5, Michael was entitled to all remaining house and insurance proceeds. The court entered the order on December 4, 2017.

Saunders timely appealed.

DISCUSSION

A. Review of Statutory Interpretation and Application

"The proper interpretation of a statute, and its application to undisputed facts, presents a question of law . . . subject to de novo review. [Citations.] The rules governing statutory interpretation are well settled. We begin with the fundamental principle that '[t]he objective of statutory construction is to determine the intent of the enacting body so that the law may receive the interpretation that best effectuates that intent. [Citation.]' [Citation.] To ascertain that intent, 'we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.]' [Citation.] We give effect to every word and clause so that no part or provision is rendered meaningless or inoperative. [Citations.] A statute is not to be read in isolation, but construed in context and '"with reference to the whole system of law of which it is a part so that all may be harmonized and have effect. [Citations.]"' [Citation.] 'If the statutory language is unambiguous, "we presume the Legislature meant what it said, and the plain meaning of the statute governs." [Citations.]' [Citations.]" (*Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136, 1142-1143 (*Morgan*).)

When statutory meaning is not apparent on its face, ". . . a court must give it an interpretation based upon the legislative intent with which it was passed. Where the Legislature expressly declares its intent, a court must accept the declaration. [Citations.] . . . . 'Absurd or unjust results will never be ascribed to the legislature and it will not be presumed to have used inconsistent provisions as to the same subject in the immediate context. The courts will be astute to avoid such results [Citation]. . . . "The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.'" [Citations.]" (*Board of Retirement v. Lewis* (1990) 217 Cal.App.3d 956, 964.)

B. Section 6402.5 Applies to Both Intangible and Tangible Personal Property

1. Prevailing Laws of Intestate Succession

Any part of a decedent's estate "not effectively disposed of by will passes to the decedent's heirs as prescribed" by Sections 6400 et seq., governing intestate succession. "Thus, the Legislature has, in essence, written a 'default statutory will' for those who die without a will." (*Estate of Shellenbarger* (2008) 169 Cal.App.4th 894, 898.) Section 6401 prescribes the surviving spouse's intestate share of a decedent's estate, while Section 6402 sets forth the intestate share of decedent's other heirs.

Section 6402.5 embodies the Ancestral Property Doctrine, which has been part of California Probate Law "[f]or over 80 years." (Senate Rules Committee, Office of Senate Floor

Analyses, Consent on Senate Bill No. 1218 (May 16, 1985).)[5] The Doctrine provides special distribution of property "in the unusual situation where one spouse dies, and later the second spouse dies intestate and without surviving children or a new spouse. In such cases, under the Doctrine, one-half of the community property went to the heirs of the first-to-die spouse, and one-half to the heirs of the second-to-die spouse." (*Ibid.*)

The Legislature's intent when codifying the doctrine was to prevent all property owned by either spouse or both "from passing to the heirs of one spouse solely because that spouse survived the other. [Citation.]" (*Estate of Nereson* (1987) 194 Cal.App.3d 865, 870.) Instead, the Legislature sought to "effectuate a theory of distribution in which the source of the property's acquisition is controlling. [Citation.]" (*Estate of Newman* (1994) 25 Cal.App.4th 472, 486; *Estate of Luke* (1987) 194 Cal.App.3d 1006, 1015 (*Luke*) [observing "the legislative intent that intestate succession should reflect the decedent's contribution to the estate"].)

Legislative records of the origin of Section 6402.5, subdivision (e) further clarify the Legislature's intent when drafting the statute's current language. "In 1983, the California Law Revision Commission . . . proposed to eliminate the [Ancestral Property] Doctrine entirely." (Senate Rules

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5 Reports and analyses drafted by the Senate Rules Committee, the Assembly Committee on Judiciary, and the Law Revision Commission, and versions of Senate bills, constitute properly cognizable legislative history in the courts of appeal. (*Kaufman v. Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-35.)

Committee, Office of Senate Floor Analyses, Consent on Senate Bill No. 1218 (May 16, 1985).) Instead, the doctrine was retained in a limited form applying only to real property. In 1985, proponents of Senate Bill (SB) 1218 argued fairness and equity dictated similar legislative treatment of real and personal property. "The sponsors claim[ed] that existing law denie[d] a large number of heirs of the first-to-die spouse of an equitable share of substantial community personal property assets." SB 1218 eventually restored the application of the doctrine to personal property. (*Ibid*.; 20 Cal. Law Revision Com. Rep. (1990), p. 1466.)

In response to the Assembly Committee on Judiciary's concerns that an estate's costs in identifying a predeceased spouse's eligible relatives and underwriting litigation regarding property tracing and transmutation might exceed the value of the personal property at issue, the 1986 codified version of the bill differentiated between real and personal property based on the length of time between the spouses' deaths, and further conditioned the doctrine's application to personality in efforts to mitigate cost and litigation concerns. (Assembly Committee on Judiciary, Analysis of Senate Bill No. 1218 (1985-1986 Reg. Sess.) as amended August 12, 1986 (hg. August 12, 1986); Assem. Amend. to Sen. Bill No. 1218 (1985-1986 Reg. Sess.) Aug. 12, 1986; Assem. Amend. to Sen. Bill No. 1218 (1985-1986 Reg. Sess.) Aug. 19, 1986; Stats. 1986, ch. 873, § 1, pp. 2995-2997.)

2. Section 6402.5's Language Applies to Intangible Property

Saunders argues the trial court misinterpreted Section 6402.5 by giving the statute a "a broad reading that (i) re-writes the statute, (ii) is divorced from its purpose, and (iii) if left

uncorrected, would yield absurd results." Saunders claims that Section 6402.5 embodies the Legislature's intent that blood lineage trump otherwise applicable laws of intestacy only with regard to realty, heirlooms, or other tangible personal property, but not with regard to cash—"an entirely fungible asset owing no special allegiance to Morones's blood relatives." Thus, Saunders argues, the court erred when it construed Section 6402.5 as applicable to the cash proceeds from (1) Michael's sale of the Jerry Place house and (2) Morones's life insurance policy.[6]

Section 6402.5, subdivision (b) provides that, when decedent has no surviving spouse or issue, decedent's predeceased spouse died five or fewer years before the decedent, and decedent is survived by the predeceased spouse's issue, the personal property in decedent's estate attributable to the decedent's predeceased spouse passes to the predeceased spouse's surviving issue. Vega died 10 months after her husband, Morones. Vega had no children and did not remarry after Morones's death. Accordingly, Section 6402.5, subdivisions (a) and (b) dictate that Morones's son Michael is entitled to that

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[6] Saunders argues that California's ancestral property statute has been sharply criticized, is rarely applied, and that the law revision commission has previously recommended its repeal. Despite criticism, the state's ancestral property statute remains intact and controls where applicable. (Prob. Code, § 6402.5.) Fundamentally, ""[. . . intestate succession is wholly statutory. Any inequality which results from the operation of [Section 6402] has been engendered by the Legislature itself." (*Estate of McDill* (1975) 14 Cal.3d 831, 840 (*McDill*).) "If a different result had been desired, there was ample opportunity to suitably alter the statutes in question." (*Ibid*.)

portion of Vega's estate "attributable to" Morones. Section 6402.5, subdivision (f) defines the "'portion of [Vega's] estate attributable to [Morones]" as (1) one-half of any community property in existence at the time of Morones's death (including property Morones gave Vega by way of gift, descent, or devise), and (2) all of Morones's separate property that came to Vega by way of gift, descent, or devise, or by right of survivorship.

Section 6402.5, subdivision (e) states "[f]or the purposes of disposing of property pursuant to subdivision (b), 'personal property' means that personal property in which there is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more."[7] Saunders argues that the statutory qualifiers placed on personal property in subdivision (e) "make[ ] clear the Legislature was concerned with tangible, physical assets—not cash. . . ." However, the house sale's proceeds meet Subdivision (e)'s conditions.

Saunders's contention that "'aggregate fair market value' is a concept that applies only to tangible personal property" is unsupportable. California caselaw has applied the concept of fair market value to stocks and bonds, which are intangible monetary interests. (See *Durgin v. Kaplan* (1968) 68 Cal.2d 81, 86; *Margolis v. San Diego Trust & Sav. Bank* (1936) 17 Cal.App.2d 159, 160.)

The language of Section 6402.5, subdivision (d) supports subdivision (e)'s application to intangible property, including sales proceeds. Section 6402.5, subdivision (d) requires a

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[7] Michael provided written record of Morones's estate's ownership of the proceeds from the Jerry Place house sale, which exceeded $10,000.

petitioner to notify the relatives of decedent's predeceased spouse if decedent's estate contains personal property those relatives might be entitled to, so long as "the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate" is ten thousand dollars ($10,000) or more.

If Section 6402.5 applied only to tangible personal property, there would be no reason to require notice of decedent's intangible personal property; however, subdivision (d)'s express language requires just that. Saunders's proposed interpretation would render Section 6402.5's notice requirement for decedent's intangible personal property surplusage. "A construction that renders some statutory language surplusage or redundant is to be avoided. [Citation.]" (*Bernard v. Foley* (2006) 39 Cal.4th 794, 810-811.)

Finally, property does not lose its character or status as separate or community property because of a change in form or identity. (*Estate of Westerman* (1968) 68 Cal.2d 267, 277-278 [When property is sold, "any consideration received by decedent in exchange therefor assumes the status of the property conveyed. [Citation.] The right to follow property subject to the operation of [the in-law intestacy statute] into a changed form enables that [statute] to operate on any property retained by decedent at the time of his death traceable into the specific property coming to decedent in accordance with the statute"].)

C. Morones's Life Insurance Proceeds Are Within the Purview of Section 6402.5

Saunders argues that even if Section 6402.5 reaches cash, Morones's life insurance proceeds are not part of her estate

attributable to her predeceased spouse because Vega received these proceeds through contract. (Prob. Code, § 6402.5, subd. (f)(4).)

"[W]hen a policy of insurance is taken upon the life of the husband during coverture and the wife, her executors, administrators, or assigns, are the beneficiaries named in the policy, the husband is presumed to have thereby made a gift to his wife of the policy, as well as of the entire proceeds thereof, and these become her separate property." (*In re Estate of Castagnola* (1924) 68 Cal.App. 732, 736; see also *Mazman v. Brown* (1936) 12 Cal.App.2d 272, 274 [". . . 'the designation of a beneficiary in a policy of life insurance initiates in favor of the beneficiary an inchoate gift of the proceeds of the policy, which, if not revoked by the insured prior to his death, vests in the beneficiary at the time of his death; . . .' [citations]."])

When Morones died, Vega received the proceeds of his life insurance policy outside of probate. "It is well settled that a beneficiary under an insurance policy takes by virtue of the contract of insurance rather than by the law of succession; that the proceeds do not become a part of the estate of the insured; and the law of descent and distribution has no applicability to such cases. [Citations.]" (*Estate of Welfer* (1952) 110 Cal.App.2d 262, 265.) When Vega then died without a will, however, the proceeds became part of her estate to which California's intestacy statutes apply.

In *Estate of Allie*[8] (1958) 50 Cal.2d 794, 800 (*Allie*), the Supreme Court addressed a factually similar case in which the predeceased spouse had designated his surviving wife as the beneficiary of his life insurance policy. When the wife subsequently died intestate, the policy proceeds became part of the wife's estate subject to California's intestate succession laws. The Supreme Court held that "[t]he wishes expressed by the insured have already been fully carried out by payment of the policy proceeds into the estate of his beneficiary (his wife, the decedent herein), and if his beneficiary had left a valid last will and testament expressing her own wishes as to further distribution of such proceeds, those wishes would likewise be respected. The issues now before us involve, rather, the distribution of the policy proceeds from the estate of the insured's chosen beneficiary under the laws of intestate succession of California, as expressed in its Probate Code. . . ." (*Ibid.*) *Estate of Allie* held that the predeceased spouse's heirs were entitled to share in the decedent's (community) policy proceeds under the in-law intestacy statutes. (*Id.* at pp. 801-802.) As in *Estate of Allie*, the insurance proceeds remaining in Vega's estate are properly subject to California's prevailing intestacy statutes.

D. Michael Bore the Burden of Establishing Entitlement to Assets in Vega's Estate

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[8] Saunders argues that *Estate of Allie* is distinguishable because it purports to interpret a statutory scheme that "read very differently" than current Section 6402.5's "restrictive definition of 'personal property. . . .'" However, as discussed *supra*, California's current in-law intestacy statute reaches the same scope of personalty as did its predecessors.

Section 6402.5, subdivision (c) places the burden of proof on the claimant "to show the exact personal property to be disposed of to the heir." This burden required Michael to prove certain personal property was either community property or Morones's separate property, and to trace that property into Vega's estate. (*Luke*, *supra*, 194 Cal.App.3d at p. 1012; *Estate of Abdale* (1946) 28 Cal.2d 587, 593 [claimant in-law heir bears burden of identifying and tracing predeceased spouse's property in decedent's estate].)

1. Standard of Review of Factual Findings

"'As to disputed factual issues, a reviewing court's role is simply to determine whether substantial evidence supports the trial court's findings of fact . . . .' [Citations.]" (*O'Gara Coach Co., LLC v. Ra* (2019) 30 Cal.App.5th 1115, 1124; see also *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 708 ["'We review de novo the trial court's ruling, but defer to its determination of any express or implied factual findings'"].) "'[The] power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the trial court's findings. [Citations.] 'We must therefore view the evidence in the light most favorable to the prevailing party, giving [him] the benefit of every reasonable inference and resolving all conflicts in [his] favor . . . .' [Citations.] "'The finding of a trial court that property is either separate or community in character is binding and conclusive on the appellate court if it is supported by sufficient evidence, or if it is based on conflicting evidence or upon evidence that is subject to

different inferences . . . .'" [Citation.]" (*Estate of Leslie* (1984) 37 Cal.3d 186, 201.)

2. Effect of No Statement of Decision

Saunders did not request a statement of decision or modifications to the court's order granting Michael's Petition.

When no party requests a statement of decision, the reviewing court "will imply findings to support the judgment." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134 (*Arceneaux*).) "The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment. [Citation.] The doctrine is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error. [Citations.]" (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58; see also *Arceneaux*, *supra*, 51 Cal.3d at p. 1133.) Accordingly, the trial court's factual findings will be upheld if supportable by the evidence and any reasonable inferences that arise from that evidence.[9]

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[9] "The rules of practice applicable to civil actions . . . apply to, and constitute the rules of practice in, proceedings under [the Probate Code]. All issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions." (§ 1000; accord *Guardianship of Pankey* (1974) 38

E. Michael Carried His Burden with Regards To The Proceeds From The Sale of the Jerry Place House

The record supports the trial court's determination that Michael was entitled to all proceeds from the sale of Morones's separate property. Michael's petition for settlement of his father's estate claimed "[t]he whole of [Morones's] estate is [his] separate property." This claim went uncontested, and the trial court's distribution order affirmed that Morones's estate consisted "entirely of the separate property of the decedent [Morones]." Michael's petition for distribution of Vega's estate likewise asserted that all property in Morones's estate, including the Jerry Place house, had been Morones's separate property. Saunders's pleadings admitted that all property in Morones's estate, including the Jerry Place house and its proceeds, were Morones's separate property.

This pleading admission establishes Michael's entitlement to Vega's distribution of the Jerry Place house sale proceeds. "The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court." (Code of Civ. Proc., § 420.) In probate proceedings, petitions, answers, objections, responses, and accounts filed constitute pleadings. (Cal. Rules of Court, rule 7.3, (2).) "'Facts established by pleadings as judicial admissions '"are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted, by the party whose pleadings are used against him or her.' [Citations.] …

Cal.App.3d 919, 928 [holding that Code of Civ. Proc., § 632 is applicable to probate proceedings].)

[Citation.]'" [Citations.] . . . . a judicial admission is ordinarily *a factual allegation by one party that is admitted by the opposing party*. The factual allegation is removed from the issues in the litigation because the parties *agree* as to its truth. . . ." (*Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 451-452; *Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1272 ["An admission in a pleading is *conclusive* on the pleader. [Citation.] ' . . . [A] judgment may rest in whole or in part upon the admission without proof of the fact.' [Citation.]"].)

F. Michael Failed to Carry His Burden Regarding the Proceeds of Morones's Life Insurance Policy

Michael concedes Morones purchased his life insurance policy while married to Vega. Property acquired during marriage by either spouse other than by gift or inheritance is presumed to be community property. (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 289-290.) Michael attempted to prove that the policy was exclusively Morones's separate property by introducing Morones's policy application, a letter from the insurer's claims department, and Joint Account statements from December 2013 until Morones's death. These exhibits demonstrated that the policy premiums were charged to the Joint Account beginning in December 2011. However, Michael made no attempt to account for payment of the policy's premiums between 2000 and 2011, when the premiums were paid from a Wells Fargo checking account. Michael offered no evidence or testimony regarding the Wells Fargo account or its funding.

Michael conceded Morones worked during his marriage to Vega, yet Michael made no effort to distinguish Morones's

community wages from his pre-marriage separate wages, or to trace that portion of Morones's retirement income attributable to his pre-marriage employment. "When separate property is intermingled with community funds, the respective properties or funds remain unchanged in character so long as they can be clearly ascertained [citation]; but the presumption in favor of community property [citation] applies to commingled property [citation] so that the burden of proof rests with the party claiming the property to be separate [citation]." (*Estate of McGee* (1959) 168 Cal.App.2d 670, 677.)

Michael introduced no evidence regarding the character of the policy's premium payments between 2000 and 2011, and thus the court had no basis to determine that no community funds were used to make the premium payments during these years. "[W]here premiums on a life insurance policy issued on the life of one of the spouses were paid with community funds, the policy is community property . . . ." (*Allie*, *supra*, 50 Cal.2d at p. 798.) As a result, there is no evidence to support the trial court's ruling that Morones's life insurance policy, and thus its proceeds, were Morones's separate property.

G. The Trial Court's Denial of Saunders's Request For Continuance Was Not Prejudicial

"The decision to grant or deny a continuance is committed to the sound discretion of the trial court. [Citation.]" (*Forthmann v. Boyer* (2002) 97 Cal.App.4th 977, 984-985.) "A reviewing court will not disturb the exercise of a trial court's discretion unless it appears that there has been prejudicial error." (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1054; *Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527 [". . .

an abuse of discretion results in reversible error only when the denial of a continuance results in the denial of a fair hearing, or otherwise prejudices a party. [Citation]]".)

Here, there is no showing of prejudice. Saunders's pleading admission that the Jerry Place house was Morones's separate property conclusively removed the issue from the litigation. A trial continuance could not have resulted in a different ruling as to this issue. Our reversal of the judgment regarding Vega's insurance proceeds moots any potential prejudice flowing from that issue.

DISPOSITION

The judgment is reversed in part and the matter is remanded to the trial court with instructions to enter an order distributing Vega's life insurance proceeds 50 percent to Michael and 50 percent to Vega's intestate heirs. Each party shall bear its own costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.