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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROCHELLE H. STERLING,

Plaintiff and Respondent,

v.

V STIVIANO,

Defendant and Appellant.

B265237

(Los Angeles County
Super. Ct. No. BC538659)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Richard L. Fruin Jr., Judge. Affirmed.

Nehoray Legal Group and Mac E. Nehoray for Defendant
and Appellant.

Greenberg Glusker Fields Claman & Machtinger, Pierce
O'Donnell and Ricardo P. Cestero for Plaintiff and Respondent.

Appellant V Stiviano received valuable gifts from the husband of respondent Rochelle Sterling. All of the gifts were derived from community property, and Ms. Sterling did not consent to any of them. Ms. Sterling sued Ms. Stiviano for return of the gifts. Relying on Family Code section 1100, subdivision (b),¹ the trial court entered judgment in favor of Ms. Sterling, setting aside the gifts and ordering Ms. Stiviano to return the gifts or their value to Ms. Sterling on behalf of her marital community.

Ms. Stiviano appeals from the judgment, contending the trial court did not have authority to grant this relief. Her contentions have no merit, and we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts

Our factual summary is based upon the trial court's statement of decision issued after the bench trial in this action. Neither party has challenged any of the court's factual findings.

Donald and Rochelle Sterling were married in 1955, and they have remained married at all times relevant to this action. During their marriage, the Sterlings acquired considerable property and wealth, which was community property.

Mr. Sterling met Ms. Stiviano sometime around February 2011. During the period between 2011 and 2014, Mr. Sterling gave a number of valuable gifts to Ms. Stiviano. All of the gifts were from the Sterlings' community property, and Mr. Sterling went to great lengths to conceal them from his wife. Ms. Sterling did not consent in writing or in any other manner to the gifts that

¹ Unless otherwise specified, all further statutory references are to the Family Code.

her husband gave to Ms. Stiviano. Ms. Sterling did not know about any of the gifts, until she pieced together the various gift transactions shortly before filing her lawsuit.

Mr. Sterling made the following gifts to Ms. Stiviano: a 2012 Ferrari automobile that was purchased with \$240,234.45 in community assets; a 2007 Bentley automobile that was purchased with \$90,000 in community assets; a 2013 Range Rover sport utility vehicle that was purchased with \$70,000 in community assets; residential property located at 8437 West 4th Street in Los Angeles that was purchased with \$1,781,750 in community assets; and various cash payments totaling \$430,000 in community assets. The total value of the gifts that Mr. Sterling gave to Ms. Stiviano was \$2,611,984.45.

2. Proceedings

Ms. Sterling commenced this action by filing a verified complaint asserting legal and equitable claims. The trial court bifurcated the equitable claims (set aside transfer of community property; constructive trust; accounting; quiet title; reformation of deed; declaratory relief; and declare gifts of community property void), which were addressed in a three-day bench trial.

Following the trial, the court issued a detailed statement of decision in favor of Ms. Sterling. The decision noted that the evidence concerning the gifts from Mr. Sterling to Ms. Stiviano was largely undisputed, and the trial was devoted primarily to a determination of the value of the gifts and the amounts taken from community property to pay for them.

In its ruling, the court applied section 1100, subdivision (b), which states: “A spouse may not make a gift of community personal property, or dispose of community personal property for less than fair and reasonable value, without the written consent

of the other spouse. This subdivision does not apply to gifts mutually given by both spouses to third parties and to gifts given by one spouse to the other spouse.”

The court found that all of Mr. Sterling’s gifts to Ms. Stiviano were derived from community property; the vehicles and residential property were purchased with community funds and given in kind, and the cash payments were made from community funds. The court also found that Ms. Sterling did not consent in writing or in any other manner to the gifts given to Ms. Stiviano.

The court therefore concluded that section 1100, subdivision (b) applied to the gifts, because its purpose is “to protect each spouse from the unauthorized acts of the other that deplete the community.” The court further concluded that the statute authorized an equitable decree setting aside the gifts and requiring Ms. Stiviano to return the gifts or their value to the marital community.

In accordance with its decision, the court entered judgment in favor of Ms. Sterling. The judgment declared that Ms. Sterling has a community property interest in the gifts given by her husband, and Ms. Stiviano has no rights, title or interests in the property given to her as gifts. The judgment ordered Ms. Stiviano to pay the sum of \$830,234.45 and transfer the residential property located at 8437 West 4th Street in Los Angeles to Ms. Sterling on behalf of the Sterlings’ marital community. The judgment quieted title to the residential property in Ms. Sterling on behalf of the marital community and declared that Ms. Stiviano held the residential property in a constructive trust on behalf of the marital community.

CONTENTIONS

Ms. Stiviano appeals from the judgment, contending the trial court improperly applied a remedy that is not authorized by section 1100, subdivision (b) and is inconsistent with other statutory provisions. This presents an issue of law that is reviewed de novo. (See *Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212 [“A trial court’s interpretation of a statute is reviewed de novo. [Citations.] Similarly, the application of a statutory standard to undisputed facts is reviewed de novo.”]; accord *Suarez v. City of Corona* (2014) 229 Cal.App.4th 325, 332-333.)

DISCUSSION

1. A gift made in violation of section 1100, subdivision (b) can be set aside.

Ms. Stiviano contends the trial court’s set aside remedy is invalid and unauthorized, because section 1100 only deals with the fiduciary duties of one spouse to another and does not apply to third parties. According to Ms. Stiviano, the trial court “arrived at its own remedy” of taking away her property. This argument utterly ignores well-settled principles of California law.

Section 721, subdivision (b) imposes a fiduciary duty upon transactions between spouses. It provides in relevant part that “in transactions between themselves, spouses are subject to the general rules governing fiduciary relationships that control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other.”

This fiduciary obligation is also imposed upon transactions involving a spouse's management and control of community assets. The duty is set forth in section 1100, subdivision (e), which provides in relevant part: "Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721"

Consistent with this general fiduciary duty, section 1100, subdivision (b) prohibits one spouse from making a transfer or gift of community personal property without the written consent of the other spouse. It states in pertinent part: "A spouse may not make a gift of community personal property, or dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse." (§ 1100, subd. (b).)

In a comparable provision, section 1102, subdivision (a) prohibits one spouse from making a transfer or encumbrance of community real property without the written consent of the other spouse. It provides in pertinent part that "both spouses, either personally or by a duly authorized agent, must join in executing any instrument by which that community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered." (§ 1102, subd. (a).)

For many decades, California courts have applied these provisions -- which existed in former statutes recodified in the present Family Code -- to hold that gifts or transfers of community personal and real property by one spouse, without the written consent of the other spouse, may be set aside and

recovered by the non-consenting spouse. (See *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 31-35 (*Droeger*); 11 Witkin, Summary of Cal. Law (10th ed. 2005) Community Property, §§ 137-145, pp. 704-712; Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group 2015) ¶¶ 8.675 to 8.692, pp. 8-244 to 8-251 (Hogoboom).)

The seminal case of *Britton v. Hammell* (1935) 4 Cal.2d 690 (*Britton*) is illustrative. In that case, a husband made gift deeds of community property without his wife's consent. Just as Ms. Sterling has done here, the wife brought a civil action during marriage to declare the deeds void and compel return of the property to the marital community. The trial court ruled for the wife and our Supreme Court affirmed, holding that she "should be permitted to set aside the gift of community property in its entirety." (*Id.* at p. 692.)

This set aside remedy has been repeatedly applied in actions by a non-consenting spouse to set aside a transfer and recover community real and personal property under these circumstances. Our Supreme Court concisely summarized the governing principle in *Harris v. Harris* (1962) 57 Cal.2d 367, 369, a case involving personal property: "Gifts made without the consent of the wife are not void, but are voidable at the instance of the wife. [Citations.] If the wife acts to avoid the gift during the continuance of the community, the whole gift will be avoided. [Citation.] If she acts after the community has been dissolved, the gift will be avoided to the extent of her one-half interest in the community property transferred." (Accord, *Babbitt v. Babbitt* (1955) 44 Cal.2d 289, 293 [real property]; *Ballinger v. Ballinger* (1937) 9 Cal.2d 330, 334 [personal property]; *Novo v. Hotel Del*

Rio (1956) 141 Cal.App.2d 304, 308 [personal property]; *Lynn v. Herman* (1946) 72 Cal.App.2d 614, 617-618 [personal property].)

In the more recent case of *Droeger*, the court traced the history of the set-aside remedy. It noted courts have consistently recognized that both spouses must consent to the transfer of an interest in community property. (*Droeger, supra*, 54 Cal.3d at pp. 31-35.) Resolving a conflict among appellate decisions as to the extent of the relief that may be ordered for a violation of this principle, the court followed *Britton* and held that when a non-consenting spouse brings an action during marriage to challenge a transfer of community property, the transfer is voidable in its entirety. (*Droeger*, at pp. 35-38; see also *Lezine v. Security Pacific Fin. Services, Inc.* (1996) 14 Cal.4th 56, 67-68 (*Lezine*) (following *Droeger*).)

Despite the well-entrenched nature of this principle, Ms. Stiviano claims these appellate authorities do not apply because they were decided under former statutory provisions in the Civil Code rather than the current provisions of the Family Code. This argument has no merit whatsoever.

Section 1100 of the current Family Code was derived principally from former Civil Code sections 5125 and 5127, which were derived principally from former Civil Code sections 172 and 172a. But the operative provisions have been passed along through the various codifications of the statutes. (See Cal. Law Revision Com. com., Deering's Ann. Fam. Code (2006 ed.) foll. § 1100, p. 376 ["Section 1100 continues former Civil Code Section 5125 without change, except that section references have been adjusted."]; 11 Witkin, Summary of Cal. Law, *supra*, § 137, pp. 704-705 (comparing Civ. Code, § 172 with Fam. Code, § 1100); *Droeger, supra*, 54 Cal.3d at pp. 31-35 and *Lezine, supra*,

14 Cal.4th at pp. 66-68 (both discussing evolution of the statutes).)

For all these reasons, Ms. Stiviano is completely wrong in asserting that the trial court “arrived at its own remedy” in this case. The court followed well-established principles by entering an equitable decree that set aside the gifts from Mr. Sterling and required Ms. Stiviano to return the gifts or their value to the Sterlings’ marital community.

2. Civil Code section 1148 does not apply.

Ms. Stiviano contends the trial court’s judgment conflicts with Civil Code section 1148, which states: “A gift, other than a gift in view of impending death, cannot be revoked by the giver.” No authority has been cited in support of this argument, and it is in all events contrary to the law.

Ms. Stiviano’s argument is contrary to the statute itself, which states that a gift “cannot be revoked *by the giver*.” (Civ. Code, § 1148, italics added.) Ms. Sterling was not “the giver” of the gifts to Ms. Stiviano; they were given by her husband, Mr. Sterling. In addition, it is well-settled that section 1148 restricts the donor’s ability to revoke a gift, and it does not restrict a court of equity from setting aside a gift on a proper showing. (See *Murdock v. Murdock* (1920) 49 Cal.App. 775, 781-782.)

3. Section 1101 is not the exclusive remedy.

Finally, Ms. Stiviano contends the trial court’s judgment conflicts with section 1101 of the Family Code, which she describes as providing the exclusive remedy for Ms. Sterling. Once again, this argument is contrary to the law.

Section 1101 provides express remedies between spouses for breach of a fiduciary duty in the management and control of community property. The statute provides one spouse with a claim against the other spouse for breach of fiduciary duty resulting in an impairment to the claimant's undivided one-half interest in the community estate. (See § 1101, subd. (a).) Upon proof of such a claim, the court may order an accounting (*id.*, subd. (b)); may reform title to property (*id.*, subd. (c)); may award in kind relief or monetary damages, plus attorney fees and costs (*id.*, subd. (g)); and may award a penalty in the nature of punitive damages (*id.*, subd. (h)). (See generally, 11 Witkin, Summary of Cal. Law, *supra*, §§ 133-134, pp. 699-703; Hogoboom, *supra*, ¶¶ 8.612 to 8.625.5, pp. 8-225 to 8-231.)

Ms. Stiviano contends a breach of fiduciary duty claim under section 1101 provides the exclusive remedy for a spouse who has suffered injury from the other spouse's unauthorized transfer of community property. Nothing in the language of section 1101 suggests it is intended to be an exclusive remedy. Indeed, the statute says quite the opposite because it declares that remedies for breach of fiduciary duty "shall include, *but not be limited to*" the specified statutory relief. (See § 1101, subd. (g) & (h) (*italics added*).)

In *Droeger*, *supra*, 54 Cal.3d at pages 39-40, footnote 10, our Supreme Court examined the legislative history and rejected the argument that the statutory predecessor to section 1101 provided the exclusive remedy to a spouse who objects to an unauthorized transfer of community property. (See also *Fields v. Michael* (1949) 91 Cal.App.2d 443, 448 (holding that a wife who suffered injury from an unauthorized transfer of community

property “is entitled to pursue whatever course is best calculated to give her effective relief.”)

Ms. Stiviano also contends Ms. Sterling’s remedies are limited by section 1101, subdivision (c)(4). The statute provides that one remedy upon proof of a breach of fiduciary duty claim by one spouse against the other is to reform title “held in the name of the other spouse alone or . . . held in some other title form . . .” (§ 1101, subd. (c).) Subdivision (c)(4) specifies an exception to this relief: a court cannot reform title to “[a]ny other property, if the revision would adversely affect the rights of a third person.” (§ 1101, subd. (c)(4).) Ms. Stiviano states that she is a “third person” within the meaning of the statute, and subdivision (c)(4) prevents the trial court from interfering with her title to the gifts given to her by Mr. Sterling.

This is another way of arguing that section 1101 provides the exclusive remedy to Ms. Sterling, which is not the law. In addition, the present action is not a claim for breach of fiduciary duty between the Sterlings. Section 1101, subdivision (c)(4) pertains to a claim for breach of fiduciary duty by one spouse against the other, in which it is logical to limit relief that would affect the rights of a third person. The present action involves claims that Ms. Sterling asserted directly against Ms. Stiviano. As a party to this action, Ms. Stiviano appeared and defended her interests. The judgment did not affect the interests of an absent “third person” as contemplated by section 1101, subdivision (c)(4).

DISPOSITION

The judgment is affirmed. Respondent Rochelle H. Sterling shall recover her costs.

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JOHNSON (MICHAEL), J.*

We concur:

EDMON, P. J.

LAVIN, J.

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