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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CHARLIE ZHAO,

Plaintiff and Appellant,

v.

SUZIE YOUNG,

Defendant and Respondent.

B271103

(Los Angeles County
Super. Ct. No. GD044309)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christine Byrd, Judge. Affirmed in part, reversed in part.

Charlie Zhao in pro per for Plaintiff and Appellant.

Suzie Young in pro per for Defendant and Respondent.

INTRODUCTION

Charlie Zhao (husband) appeals from a judgment of dissolution of marriage, challenging the trial court's division of the marital estate and the reimbursement it ordered him to pay respondent Suzie Young (wife). Husband largely takes issue with the court's finding that husband diverted \$247,999 away from the community without wife's written authorization and in violation of his fiduciary duties described in Family Code section 1101.¹ We reverse the court's finding that husband diverted \$43,200 to his sister Cindy between 2005 and 2009, and remand for the trial court to reassess this amount in light of other findings the court made. We affirm on all other grounds because the court's other findings were supported by substantial evidence.

FACTS AND PROCEDURAL BACKGROUND

Our recitation of the facts is based on the trial court's factual findings following a trial on the merits. This is the second time this case has been before this court; the first involved wife's appeal from the trial court's judgment that the marriage was neither void nor voidable (case No. B253721). The present appeal solely deals with the division of marital assets. Accordingly, the facts focus on the accumulation of assets and liabilities, as well as spousal authorization of community property expenditures.

1. Early Marriage

Husband was previously married to another woman, who lived in China and with whom he has one son (Alan); they divorced in 1990. Husband and his present wife, Suzie Young, married in 1991. The marriage lasted 18 years; they separated on May 15, 2009, the date husband filed the petition for dissolution. Early in the marriage, husband and wife had one

¹ All subsequent statutory references are to the Family Code.

child, who died when he was only 13 months old due to significant health problems. During the child's short life, husband stopped working to care for him, while wife worked to support the family. After the child's death, husband did not return to work due to depression. Years later, husband enrolled in school to become a nutritionist. In 2001, husband began working as a dietitian for Kaiser.

2. *Growing Financial Obligations and Disagreements*

In 1998, husband and wife purchased a small house in Alhambra. They rented the house to tenants until 2004, when they paid off the mortgage. Husband, wife, and wife's mother moved into the house in 2004. Husband's parents, who emigrated from China around this time, moved into the home in 2005.

In 2007, without wife's consent, husband purchased a \$29,000 new car for himself by borrowing \$22,000 from a bank and the balance from his parents. He also opened a new credit card, from which he made the monthly loan payments to the bank. Husband hoped that wife would pay the credit card bills from their household account. Shortly thereafter, in April 2007, Kaiser terminated husband from his employment; husband remained unemployed for 18 months. Payment of expenses, especially the new car payments, became a significant issue between the parties.

Also in 2007, Alan, husband's then-17-year-old son from his first marriage, emigrated to the United States and came to live with the couple and their parents. The two-bedroom Alhambra house was then home to six people. Three times in 2007 and twice in 2008, wife called the police to report domestic violence by husband; on each occasion she refused to prosecute.

In October 2008, Kaiser reinstated husband as an employee and he received over \$100,000 in back pay. When the parties separated six months later, husband only possessed \$22,000 remaining from that payment. During the marriage, wife accumulated a retirement account through her employer. Husband appears to have had no retirement savings at the time of separation.

3. *Husband's Unauthorized Expenditures of Community Assets*

Throughout the 18-year marriage, husband gave “lavishly” to his extended family. He transferred thousands of dollars to relatives in China without wife’s consent. After filing this action, husband transferred over \$46,000 more of community funds to China in direct violation of restraining orders set out in the family law summons. Husband used all of his community income as well as some of wife’s community income to support his relatives, giving monthly to his parents, son Alan, and husband’s sister Cindy. Husband considered Cindy to be his adoptive daughter even though there was no formal adoption by husband or wife; husband’s parents had actually adopted Cindy. In 2009, husband received \$26,485 from his sister in China. This was the sole transaction in the record where money flowed from China back to husband.

4. *Initiation of Dissolution Proceedings and Husband's Continued Occupation of the Alhambra House*

On May 15, 2009, husband filed for dissolution. He and his entire family continued to reside in the Alhambra house with wife and her mother. Wife again reported domestic violence to police but refused to prosecute.

In November 2009, husband's then-seven-year-old adopted sister Cindy emigrated from China. At this time, husband's parents, son, adopted sister, and husband moved out of the Alhambra house. However, four of them retained keys to the house, occasionally and unexpectedly returned to the house, and kept their belongings in one of the bedrooms, which husband padlocked. Husband also kept a large quantity of personal belongings in the padlocked garage and storage shed on the property.

In 2011, wife obtained an order granting her exclusive possession of the Alhambra house. In March 2012, the court issued a domestic violence restraining order against husband for three years, and thereafter renewed it for five years. The restraining orders granted wife exclusive use of the Alhambra house.

5. *Trial on Division of Marital Assets*

Trial on the division of marital assets commenced on November 9, 2015 and concluded on December 15, 2015. Both parties were self-represented throughout trial.² Husband argued that wife had diverted \$382,408 in funds away from the community, without his authorization. Wife argued that husband had wrongfully transferred \$247,999 away from the community to extended family members, without her consent. Husband and wife testified at trial. Husband's mother attempted to testify, but due to differences in dialect, multiple Mandarin interpreters tried and failed to translate for her. The parties instead stipulated to her testimony.

² The parties appear to have had the assistance of counsel during discovery.

On December 30, 2015, the court issued its tentative decision explaining its factual findings, which we have summarized in part above. The tentative decision divided the marital assets, characterized community and separate property, and made certain orders for reimbursement. Husband moved for a new trial, which was denied. In March 2016, the trial court entered judgment dividing the assets.

6. *Trial Court's Findings and Division of Assets*

The trial court found by clear and convincing evidence that husband diverted significant sums away from the community, to his parents, his sister Cindy, and to unknown people in China. He diverted the community money without wife's knowledge or written consent, and in violation of his fiduciary duties and the Standard Family Law Restraining Orders set forth in the summons he received. The court based its findings on wife's collection and analysis of bank records. The court determined that husband was trying to cover up his diversion of funds by blaming the missing money on wife. The court found that husband's accusations were not supported by evidence. The court concluded that husband acted with fraud, oppression, and malice. Pursuant to section 1101, subdivision (h), the court awarded wife an amount equal to 100 percent of the funds husband wrongfully transferred, which totaled \$247,999.³

³ Under section 1101, subdivision (a), "A spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's present undivided one-half interest in the community estate, including, but not limited to, a single transaction or a pattern or series of transactions, which transaction or transactions have caused or will cause a detrimental impact to the claimant spouse's undivided one-half interest in the community estate." Remedies

The court awarded wife the Alhambra house, which it valued at \$380,000, and all of the household furniture, furnishings, appliances, and the piano. The court awarded wife bank accounts containing \$1,259.68, \$1,014.00, \$34.72, \$29.99, and \$5,676.00, as well as the couple's two burial plots. The court found that the jewelry in wife's possession were gifts from husband and her separate property. The court awarded wife her deferred compensation account. The court also found that wife was not required to repay the community for a loan taken from her deferred compensation account because it was spent on community expenses.

The court awarded husband bank accounts containing \$22,352.00 and \$408.00, as well as three parcels of land in Kern County that were purchased during the marriage. To equalize the division of property, the court ordered husband to pay wife \$1,599 within 30 days after entry of judgment. The court found husband's tax liability to be his separate property. The court denied husband *Watts* charges relating to wife's postseparation occupancy of the Alhambra house.⁴

The court also awarded husband and wife their respective retirement accounts and life insurance policies. The court determined that neither of the couple's two vehicles had worth as

for violation of this fiduciary duty include "an award to the other spouse of 100 percent, or an amount equal to 100 percent, of any asset undisclosed or transferred in breach of the fiduciary duty." (§ 1101, subd. (h).)

⁴ *In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374, held that the trial court, where appropriate, may charge a spouse who engages in exclusive use of community property after separation for one-half of that community asset's use.

the parties did not introduce evidence of worth, and awarded wife the 2000 Honda Accord and husband the 2007 Honda Pilot.

DISCUSSION

1. Husband's Request to Strike Wife's Brief is Denied

Husband asks this court to dismiss or strike the respondent's brief because it was "noncompliant with relevant Court Rules." We have considered only those matters in the wife's brief that are proper arguments supported by the record. We exercise our discretion not to strike the respondent's brief.

2. Standard of Review

Husband appeals the trial court's findings asserting that they were not supported by the evidence. "In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*)). "A single witness's testimony may constitute substantial evidence to support a finding. [Citation.] It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility." (*Ibid.*) "A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

3. *We Affirm in Part, and Reverse and Remand in Part the Court's Findings on the Amount of Community Property Husband Diverted*

Husband argues that the court erroneously found that he diverted \$247,999 from the community without wife's authorization, in violation of section 1101, subdivision (h). The court found the \$247,999 total by adding two unauthorized types of transfers—\$124,317 in money sent to relatives in China and \$97,200 in gifts made to relatives in the United States—and one transaction that returned community money from China (\$26,485). We address the amounts individually below.

a. The Court's Finding that Husband Sent \$124,317 to Relatives in China Was Supported by Substantial Evidence

The court based its finding that husband transferred \$124,317 to relatives in China on bank records and wife's testimony. The court explained: "While Wife wrote checks that were for typical household expenses, Husband wrote checks to himself, withdrawing the money from the joint account and depositing it directly into a separate account under his name alone. . . . From there, he wired the funds to China. . . . From the opening of the joint account in 1999 until it was closed in December 2007, Husband wired over \$66,000 to China." The court identified the specific account numbers, bank name, and wife's exhibit 21 and 39 to support its conclusion.

The trial court stated that "when Husband was terminated from his job at Kaiser in April 2007, he opened up a more complex system of accounts. On April 9, 2007, only two days after being terminated from his job, Husband opened another Eastern International bank account, this one under his name

alone. . . . In October and November, he opened up two more accounts under his name. . . . From these three new accounts, Husband sent an additional \$6,570 to China before separation and sent \$46,740 more after separation.” The court concluded that, “Altogether, Husband transferred \$124,317 without Wife’s written consent. In view of Husband’s limited income and the fact that he was supporting his relatives here in the United States rather than the other way around, the Court finds that the only source of these funds was the community.” (Footnote omitted.) Wife’s exhibits 21 and 39, and her testimony that she did not authorize the transfers of money to family in China provide substantial evidence in support of the court’s findings.

Husband argues that \$77,000 of the money sent to China was for child support of his son Alan and his “adopted daughter” Cindy, and should not be included in the court’s calculation of the amount he diverted from the community. The trial court acknowledged husband’s child support obligations to Alan, and concluded that husband’s transfers to support Alan did not violate section 1100, subdivision (b). Nonetheless, the trial court expressly found that Cindy was husband’s sister—she had been adopted by husband’s parents. Although husband testified that he intended to adopt Cindy, husband admits in his appellate brief that he did not adopt her prior to his separation from wife. Husband also testified that Cindy was actually his sister, and the court expressly found that Cindy was not a child of the marriage. As she is his sister, husband did not have child support obligations to Cindy during the marriage.

Although husband argues that the money for Alan’s child support should not be included in the section 1101 calculation, he fails to identify which money transfers were attributable to child

support payments for Alan and wrongfully included in the court's calculation. Husband argues generally that he wired the \$77,000 over an 18-year, 2-month period for both Alan and Cindy. He fails to reference any part of the record parsing out the wire transfers for Alan's support. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["To demonstrate error, [the] appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error."].) It appears the court lacked such information as husband's testimony about child support lumped Alan and Cindy together. His arguments below likewise failed to identify child support payments made specifically for Alan.

At trial, wife produced records of unauthorized wire transfers of community funds and husband admitted he made such transfers. Husband had the burden to rebut such evidence and show that particular transfers were attributable to legitimate child support payments. (See e.g., *In re Marriage of Margulis* (2011) 198 Cal.App.4th 1252, 1267.) Husband failed to do so.

Husband also argues that the court's findings were erroneous because "the [c]ourt accepted [wife]'s misrepresentations that [he] transferred the money without her agreement, and [he] invested in China with this money." As husband acknowledges, this is an issue of credibility. The trial court found wife more credible than husband when evaluating testimony about husband's wire transfers to China. We do not reevaluate the trial court's credibility determinations or reweigh the evidence on appeal. (*Thompson, supra*, 6 Cal.App.5th at p. 981.) The trial court's decision was supported by substantial evidence.

b. Substantial Evidence Supports the Court's Conclusion that \$26,485 Sent to Husband from China was Community Property

The court found that “Husband also received funds back from China in the amount of \$26,485 and did not share them with Wife. Wife claimed that these funds were a return on funds he had sent to China for investment purposes. Husband claimed that it was repayment of a \$30,000 loan he made on behalf of his niece in China. Either way, the Court finds that the funds were community in character.” Husband argues that the court erred in characterizing the \$30,000 as community property.

Husband argues the funds were separate property based on his testimony that in 2009, he had taken a loan out from credit cards to send the \$30,000 to his niece in China. Husband asserted that he received the \$26,485 back from the niece later that year. Husband acknowledges that in making its decision, the court did not credit husband’s testimony. Again, husband disputes the court’s credibility findings and weighing of the evidence. We do not reweigh the evidence or reevaluate the credibility of witnesses on appeal. (*Thompson, supra*, 6 Cal.App.5th at p. 981.) As the court’s decision is supported by wife’s testimony on this issue, we affirm.

c. The Court's Findings Are Inconsistent on the \$97,200 Gifted to Relatives in the United States

The court concluded that husband’s “gifts to relatives in the United States were \$97,200.” The court’s conclusion was supported by its finding that “Husband was giving gifts of community funds to his parents and his sister on a monthly basis without Wife’s written consent. The amount was \$1,000/month for his parents and \$800/month for his sister Cindy from 2005 to

separation in 2009, a total of about 4 1/2 years, or \$97,200.” The total breaks down to \$54,000 to his parents and \$43,200 to Cindy. Husband asserts that the court did not properly calculate the amount given to his parents. Yet, husband admitted in a discovery response, which was entered into evidence at trial, that he gave each parent \$500 per month in financial support. The court’s calculation of \$1,000 per month total given to husband’s parents is further supported by husband’s admission at trial that his parents’ only income during this time period was derived from collecting recyclables. Substantial evidence supports the court’s finding that husband gifted \$54,000 to his parents between 2005 and 2009 without wife’s authorization.

Husband also contends that the trial court miscalculated the amount gifted to Cindy because she did not arrive in the United States until 2009. Thus, no evidence supported the finding that he paid money to Cindy while she was in this country. He asserts that the judgment should be reduced by \$43,200 to correct the trial court’s error. The trial court expressly found that Cindy emigrated to the United States in November 2009. Thus, the court’s inclusion of the \$800 per month for Cindy from 2005 to 2009 appears to be a miscalculation. Although it is clear husband made payments to Cindy (or to an adult family member on Cindy’s behalf), it appears that these payments were made to people in China, where she lived between 2005 and November 2009. Payments to Cindy appear to be part of the \$124,317 sent to China. On this state of the record, the trial court may have counted gifts to Cindy twice. We conclude the trial court failed in the first instance to reconcile what might be two inconsistent facts, and therefore remand for the trial court to reassess whether this \$43,200 should be included in the court’s

calculations of husband's gifts to relatives within the United States.

4. *The Trial Court's Finding that Wife Did Not Commit Misconduct Was Supported by Substantial Evidence*

Husband argues that the court erred in accepting wife's testimony regarding how she spent \$382,408 on community expenses during the marriage. He asserts that wife breached her fiduciary duty to him in violation of section 1101 by transferring the funds out of the community without authorization.

The trial court found: "the evidence is insufficient to establish any misconduct on [wife's] part. For example, Husband questions Wife's withdrawal of about \$17,000 from savings in the Water & Power Community Credit Union . . . during the period late November 2006 to February 2007. Wife testified that the money was needed for household expenses. Husband testified that he was paying all household expenses with his Kaiser paycheck at that time, pointing to the parties' joint account, and suggesting that Wife must have withdrawn the savings for some other purpose. What Husband ignores is that he sent over \$17,000 to China that year, which represented over half his paycheck. Wife's testimony that she needed to withdraw \$17,000 from savings that year to cover the household expenses is very credible."

The court further explained, "Husband also claims that Wife diverted \$28,000 when she withdrew the funds and closed a Citibank CD account the next year, in June 2007. . . . The only evidence that he has is that the funds were withdrawn and the account was closed. Husband asks the Court to infer that the funds were all used for non-community purposes. Again, Husband ignores the family circumstances in 2007, a year in

which Husband lost his job yet purchased a new car, Husband's son came to live with the parties, and of the [six] people living in the household, Wife was the only [person] earning an income. Under these circumstances, Wife's testimony that the funds were needed for expenses is very credible. [¶] Overall, on Husband's claims that Wife took community funds for non-community purposes, Wife testified with specificity as to each questioned transaction, her use of the funds, and the community financial position. The Court finds Wife's testimony to be credible and consistent with the bank records."

As explained by the trial court, substantial evidence in the form of wife's testimony supported the finding that wife did not engage in misconduct with community assets. To the extent that husband disputes the truth of the testimony and credibility of wife, we reiterate that this court will not address such issues on appeal.

Importantly, husband failed to introduce evidence that wife transferred such funds out of the community for non-community purposes. Although husband created a chart called "Suzie Young's actual cash strength as of 2006," which purported to document wife's balances in different bank accounts, the document was never admitted to evidence. The document also failed to show that the funds were used for non-community expenditures. Husband in fact had no direct evidence the funds were not used for community expenses. As the trial court pointed out, husband's argument was that if the funds were not in the accounts, it should be assumed they were not used for the community. As trier of fact, the trial court evaluated the evidence before it and found otherwise.

5. *Husband's Remaining Substantial Evidence Challenges Are Without Merit*

Husband asserts that the court erred in valuing the Alhambra house at \$380,000, in denying his request to charge wife for rental of the Alhambra house after he and his family moved out of the residence (*Watts* charges), and in finding that a bank account containing \$22,793.41 was not his separate property. As to each of these issues, husband recognizes that the trial court found wife's testimony credible and made factual findings accordingly. Husband argues that the court should not have credited wife's testimony and should have believed his rendition of the facts. Yet, based on our independent review of the record, we conclude that the court's factual findings were supported by substantial evidence provided by wife.

Moreover, husband's arguments (like much of his brief) are substantial evidence challenges without the requisite proper exposition of all the evidence received by the trial court, and are thus waived. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [waiver of substantial evidence argument unless brief sets forth "all the material evidence on the point and not merely" the appellant's "own evidence"]; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

6. *The Court Appropriately Exercised Its Broad Discretion in Allocating the Household Furnishings and Piano*

Lastly, husband disputes the court's division of the household furnishings and the piano. He asserts "I want either the piano or the other furnishings, not neither."

It is well established that "the court has broad discretion to determine the manner in which community property is divided and the responsibility to fix the value of assets and liabilities in

order to accomplish an equal division.” (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 631.) Husband provides us no legal reasoning or factual analysis that shows how the court abused its discretion in awarding the furnishings and piano to wife.

DISPOSITION

We reverse on the limited issue of the trial court’s calculation of husband’s unauthorized transfers to Cindy between 2005 and 2009 as described in Part 3(c) of this opinion. We remand for the trial court to reassess this amount in light of its other findings and make any adjustments of the division of assets if needed. We express no opinion on whether any adjustments must in fact be made or their amount. We affirm in all other respects. Wife Suzie Young is awarded costs on appeal.

RUBIN, Acting P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.