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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of GABRIELLE and WILLIAM VANHERWEG.	2d Civil No. B292651 (Super. Ct. No. 17FL-0170) (San Luis Obispo County)
GABRIELLE VANHERWEG, Respondent, v. WILLIAM VANHERWEG, Appellant.	

William and Gabrielle Vanherweg were married in 1977 and separated in 2016. In 1985, Gabrielle inherited a part interest in the family farm from her mother. In 2001, the parties signed a transmutation agreement. (Fam. Code, § 850 et seq.)[1] Concurrently, they signed an irrevocable option purporting to give Gabrielle the right to rescind the transmutation agreement

[1] Unlabeled statutory references are to the Family Code.

should she choose to do so. In 2004, Gabrielle sold her interest in the farm for $4.2 million and used most of the funds to purchase three parcels of real property. She filed for dissolution in 2017.

At issue is the character of the real property purchased in 2004 with Gabrielle's inheritance. The trial court found the 2001 transmutation agreement invalid and further found that William failed to rebut the presumption of undue influence. The record supports the court's finding that Gabrielle signed the agreement without understanding the facts or its legal effect. William did not ask the court to set aside interspousal transfer deeds he freely signed in 2016 conveying title to the three properties to Gabrielle as her sole and separate property. The deeds provide additional support for the court's judgment confirming the properties as Gabrielle's separate property. We affirm.

FACTS

William is a college-educated wildlife biologist who has worked in his field for 27 years and raised cattle for 10 years. Gabrielle has a high school diploma and spent a year and a half at college. She worked in the home and home-schooled their seven children.

Apart from her inherited interest in a farm in Kern County, Gabrielle also received a $200,000 inheritance from her father, which she placed in a joint account with William, who managed their finances. Gabrielle did not receive account statements and knew nothing about William's investments.

The parties hired an estate-planning attorney. Gabrielle stated, "[W]e felt we needed a trust because we had seven children and some of them were minors." Gabrielle did not see the documents the attorney prepared until she signed them at his office on October 30, 2001. At the time, the only separate

property either of the parties had was Gabrielle's interest in the Kern County farm.

The parties signed the Vanherweg Family Trust (Family Trust). Section 2.2 reads, "All community property of the settlors transferred to this trust, and the proceeds of all such property, shall continue to be community property . . . . All separate and quasi-community property shall remain the separate or quasi-community property, respectively, of the contributing settlor." Section 3.4 reads, "After any revocation or termination with respect to separate or quasi-community property, the trustee shall promptly deliver the designated property to the contributing settlor."

Next, they signed a "Declaration Transmuting Character of Property" (Transmutation Agreement). It reads, "The parties to this Agreement intend to transmute the character of personal property. This Agreement is not made in contemplation of a separation or marital dissolution . . . . [¶] Wife and Husband agree to transmute the character of any real or personal property in which either has an interest to the community property of both parties." Property affected by the Transmutation Agreement is not listed. An attestation clause states that the parties read the agreement, counsel explained its meaning and legal consequences, and they acknowledged their mutual fiduciary duty.

Finally, they signed an "Irrevocable Option to Rescind Declaration Transmuting Character of Property and Agreement Concerning Estate Planning" (Option to Rescind). It gives Gabrielle the right to rescind the Transmutation Agreement "at any time up to and including a period of nine months following the death of the husband." "Upon exercise of the option to

rescind the Declaration . . . the former separate property of the Wife shall be restored to its character as her separate property."

Gabrielle testified that the attorney did not explain principles of community property or educate her about the consequences of transmutation. They did not discuss her inheritance and she "believed separate property stayed separate property, meaning inheritance." She did not seek separate counsel before signing the Transmutation Agreement because she felt protected by language in the Family Trust stating that "I could have my property back and separate property should remain separate property." She also relied on language in the Option to Rescind that "I could have my property back at any time." Gabrielle would not have signed the Transmutation Agreement had she been told the Option to Rescind might be invalid.

William testified that the Option to Rescind was intended to protect the couple's children. If Gabrielle predeceased him, it would prevent him from making a new wife the beneficiary of Gabrielle's inheritance.

In 2004, Gabrielle sold her interest in the Kern County farm for $4.2 million. She used $3 million to purchase three properties in San Luis Obispo County (the Properties). The Vanherwegs lived at one of the Properties, a 107-acre ranch, and two Properties were leased. Rental income went into community accounts. The remaining $1.2 million of Gabrielle's inheritance was spent on taxes, remodeling the Properties, and community expenses.

Gabrielle took title to the Properties as her separate property. William signed interspousal transfer deeds (ISTDs)

granting the Properties to Gabrielle as her separate property. Gabrielle then deeded the Properties to the Family Trust.

In May 2016, Gabrielle exercised the Option to Rescind. William executed ISTDs granting the Properties to Gabrielle as her separate property because she asked him to do so. She became the sole owner of the Properties.

When Gabrielle filed for dissolution, William asked the court to invalidate the Option to Rescind for lack of consideration and because he did not understand it when he signed it. His trial brief refers to the ISTDs as "the Transmutation Agreement that William executed in 2016 to attempt to save his marriage." He did not ask the court to set aside the ISTDs and testified that he signed them freely, understanding that he was giving Gabrielle the Properties. He stated, "I was doing it to save our marriage" and instill trust.

The Court's Decision

The court found no valid transmutation in 2001 or when Gabrielle transferred the Properties to the Family Trust in 2004. The court stated that the Transmutation Agreement is invalid because it does not list the property being transmuted and appears to apply conditionally to future property.

Even if the transmutation was valid at inception, the court rejected it because William did not rebut the presumption of undue influence in interspousal transactions. He had a multi-million dollar "windfall," benefitting from $1.15 million in cash Gabrielle had from her mother; $200,000 she inherited from her father; and years of income from the Properties. The transaction was not fair or just.

The court found Gabrielle "did not have full knowledge of the relevant facts. In fact, it appears neither party had full

knowledge of the relevant facts. The parties did not agree on what properties were or were not referenced in the Transmutation Agreement . . . . [which] did not enumerate any specific property. There was not a meeting of the minds when it came to what was being transmuted."

Gabrielle "convinced the court that she truly did not understand the legal repercussions of the Trust and Transmutation Agreement. She did not believe or understand that she was giving away half of her separate property inheritance through a Transmutation Agreement." She was not informed what community property means or what would happen to her inheritance. The parties' lawyer did not review the documents with her before she signed them. She believed the Family Trust and Option to Rescind ensured the separateness of her inheritance and her ability to get it back at any time.[2] The judgment confirmed the Properties as Gabrielle's sole, separate property.

DISCUSSION

Transmutation is an interspousal transaction changing the character of property. (*In re Marriage of Benson* (2005) 36 Cal.4th 1096, 1100 (*Benson*).) Married persons "may by agreement or transfer, with or without consideration," transmute separate property to community property, or community property to separate property. (§ 850.) Property acquired by inheritance during marriage is the recipient's separate property, as is rent derived from it. (§ 770, subd. (a)(2)-(3).)

We are not bound by the trial court's interpretation of the Transmutation Agreement terms. (*In re Marriage of Starkman*

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[2] The court did not address the validity of the Option to Rescind.

(2005) 129 Cal.App.4th 659, 664.) However, factual findings are conclusive on appeal if "'supported by sufficient evidence, or if it is based on conflicting evidence or upon evidence that is subject to different inferences; . . .'" (*Beam v. Bank of America* (1971) 6 Cal.3d 12, 25; *Estate of MacDonald* (1990) 51 Cal.3d 262, 266-267; *In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1520-1521 [substantial evidence supports a finding that a husband did not freely execute a writing or understand its legal significance].)

1. The 2001 Transmutation Agreement

A transmutation "is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." (§ 852, subd. (a).) The writing must state that it effects a change in the character or ownership of property. (*Estate of MacDonald, supra,* 51 Cal.3d at pp. 272-273; *In re Marriage of Starkman, supra,* 129 Cal.App.4th at p. 664.) Section 852 precludes extrinsic evidence to prove that a writing effects a transmutation. (*Benson, supra,* 36 Cal.4th at p. 1100; *In re Marriage of Holtemann* (2008) 166 Cal.App.4th 1166, 1172 (*Holtemann*).)

The Transmutation Agreement meets the requirements of section 852. It states that the parties "agree to transmute the character of any real or personal property in which either has an interest to the community property of both parties." This is not ambiguous or equivocal. It expressly changes (transmutes) "the character" of "any" real property in which either party "has" an interest to community property. By signing, the parties "agree"—now, not conditionally—to the transmutation.

The Kern County farm is encompassed within the parties' broad agreement to transmute "any" interest in real property.

There is no dispute it was the only non-community property the parties possessed in 2001. A valid agreement may state that "'[a]ll of the property, real and personal, held in the name of Husband'" is converted to community property. (*In re Marriage of Lund* (2009) 174 Cal.App.4th 40, 51-52.)

A writing that satisfies section 852 is invalid if the court finds it is the product of undue influence. Spouses are governed by rules of fiduciary duty precluding them from taking unfair advantage of each other. (§ 721, subd. (b).) If a spouse "secures an advantage over the other, the confidential relationship will bring into operation a presumption of the use and abuse of that relationship by the spouse obtaining the advantage." (*In re Marriage of Baltins* (1989) 212 Cal.App.3d 66, 88.) An interspousal transaction benefitting one spouse is presumptively induced by undue influence. (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 293-294; *In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 588.)

The Transmutation Agreement is one-sided, benefitting William and disadvantaging Gabrielle. William had *no* separate property to transmute but Gabrielle had an inherited interest in a farm. Because William gained half of Gabrielle's inheritance and she gained nothing, the transaction was presumptively induced by undue influence.

To rebut the presumption, the benefitted spouse must show "the disadvantaged spouse's action 'was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of the effect of' the transaction. [Citation]." (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 738-739.) This is a factual issue reviewed for substantial evidence. (*Id*. at p. 737.)

Substantial evidence supports the court's finding that William did not rebut the presumption of undue influence. The record shows Gabrielle lacked full knowledge of the facts or a complete understanding of the effect of the transaction.

She did not understand the scope of the Transmutation Agreement, believing it did not apply to money she received when she sold the Kern County farm in 2004. Bearing out that belief, she took sole title to the Properties and William executed ISTDs granting them to her as her separate property. She then deeded the Properties to the Family Trust, which states, "All separate and quasi-community property shall remain the separate or quasi-community property, respectively, of the contributing settlor." Gabrielle's confusion is plausible.

Her confusion was compounded by the parties' attorney, who did not tell Gabrielle the transmutation irreversibly changed her inheritance into community property. Quite the contrary. He drafted an "Irrevocable Option to Rescind" giving her the right to unilaterally reverse the transmutation "at any time." Gabrielle understood this to mean "I could have my property back at any time." She would not have signed the Transmutation Agreement had the lawyer said the Option was illusory.[3]

As a layperson, Gabrielle would not know a transmutation needs no consideration (§ 850) or if an option agreement requires consideration. She believed she could "untransmute" by exercising the Option. For his part, William obtained half of Gabrielle's inheritance for free but promised she could have it back "at any time." He now claims his promise was illusory

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[3] William says the Option to Rescind "may be considered for the fact that it helps explain whether Gabrielle understood the effect of the Transmutation Agreement . . . ."

because the Option lacks consideration. As the unintended beneficiary of the estate lawyer's poor advice, William failed to rebut the presumption of undue influence. Under the circumstances, it would be unjust to enforce the Transmutation Agreement.

This case is distinguishable from *Holtemann*, *supra*, 166 Cal.App.4th 1166, where the husband "was fully informed of the legal consequences of his actions. Nothing in the record indicates that he was misinformed or misled. On the contrary, counsel sent [husband] a letter 'reminding' him that 'this "transmutation" of separate into community property had clear and potentially irreversible consequences . . . .'" (*Id*. at p. 1173, fn. omitted.) Unlike the spouse in *Holtemann*, Gabrielle was misled and misinformed about the reversibility of the transaction.

In *In re Marriage of Lund*, *supra*, 174 Cal.App.4th 40, the transmuting party did not testify and the court inferred that he understood the agreement. (*Id*. at p. 56.) Gabrielle testified that she did not understand the ramifications of the Transmutation Agreement. The trial court based its decision on her "credible" testimony, which "carried great weight" in the court's estimation.

2. William's 2016 Deeds Transferring the Properties

The 2016 ISTDs conveying William's interest in the Properties to Gabrielle are an independent basis for affirming the judgment declaring the Properties as Gabrielle's separate property. William's trial brief refers to the ISTDs as "the Transmutation Agreement that William executed in 2016." He did not ask the trial court to set them aside. We agree with William that the ISTDs effected a transmutation under section 852.

The Properties were purchased in 2004 with Gabrielle's inheritance. She took title as her sole and separate property; William signed ISTDs acknowledging that they are Gabrielle's separate property. She then transferred title to the Family Trust. In 2016, William again executed ISTDs, conveying the Properties to Gabrielle as her sole, separate property.

An ISTD is an express transfer of a spousal interest that meets section 852 requirements for a valid transmutation. (*In re Marriage of Kushesh & Kushesh-Kaviani* (2018) 27 Cal.App.5th 449, 456; *Estate of Bibb* (2001) 87 Cal.App.4th 461, 468-469 [grant deed transferring separate interest in real property into a joint tenancy was a transmutation].)

William forfeited any attack on the 2016 ISTDs as presumptively invalid by failing to ask the court to set the deeds aside. (*In re Marriage of Benson*, *supra*, 36 Cal.4th at p. 1111-1112.) He "does not seek to *undo* a transmutation that was so grossly one-sided and unfair as to be the product of undue influence under section 721(b)." (*Id.* at p. 1112.)

William signed the 2016 ISTDs "because my wife asked me to" and understood he was "giving her my half" of the Properties. Asked if he executed the ISTDs "freely" and "voluntarily," William answered "yes." His motivation of "doing it to save our marriage" and inspire trust is not evidence of undue influence based on a misunderstanding or coercion. For 12 years he benefitted from Gabrielle's inheritance by living on one of the Properties; receiving rent from two of the Properties; and spending over $1 million of Gabrielle's inherited cash. Deeding the Properties to Gabrielle at the end of the marriage—her inheritance—was not grossly one-sided or unfair to William.

DISPOSITION

The judgment is affirmed. Respondent is entitled to recover her costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Erin M. Childs, Commissioner

Superior Court County of San Luis Obispo

M. Jude Egan for Appellant.

Stephen D. Hamilton and Garrett C. Dailey for Respondent.