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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

SHARON JERRIS, Plaintiff and Respondent, v. MARTIN JERRIS, Defendant and Appellant.	B278127 Los Angeles County Super. Ct. No. KD093149

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Don Christian, Commissioner. Reversed and remanded.

Keith A. Bregman for Defendant and Appellant.

Stuart J. Faber for Plaintiff and Respondent.

INTRODUCTION

In this marital dissolution proceeding, respondent Sharon Jerris requested the family court enter a stipulated judgment that she and her then husband, appellant Martin Jerris, had signed to resolve the division of their property and debts.[1] Martin, in turn, moved to set aside the stipulated judgment.

Before signing the stipulated judgment, Martin had financial difficulties and needed cash. He wanted to transfer his interest in the couple's residence to Sharon so that she could take out a loan on the house and pay him. The couple would then divorce. Martin transferred his property interest, but Sharon qualified to borrow only about $100,000, and the bank required her to pay down over $22,000 in debt from the proceeds. The parties signed the stipulated judgment after Sharon received the net proceeds from the loan. The stipulated judgment, drafted by Sharon's attorney, provided (among other things) that Martin would receive payment of $45,000 and the couple's residence would remain Sharon's separate property.

After an evidentiary hearing, the trial court found Martin entered the stipulated judgment knowingly and voluntarily. The court concluded the stipulated judgment was enforceable under the line of cases addressing the presumption of undue influence applicable to unequal spousal transactions. Addressing Martin's motion to set the stipulated judgment aside, the court found it represented the agreement of the parties and was not the result of mistake.

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[1] As is customary in family law cases, we refer to the parties by their first names not out of disrespect, but for ease of reference. (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1466, fn. 1.)

We conclude the trial court had the authority to consider Sharon's request to enter the stipulated judgment and Martin's motion to set it aside. We also conclude the trial court applied the presumption of undue influence and found Sharon had met her burden to overcome that presumption. Although we find substantial evidence supports a finding that Martin entered the stipulated judgment voluntarily and understood its effect, we find substantial evidence does not support a finding that Martin had knowledge of all of the relevant facts before entering the stipulated judgment. Therefore, we conclude Sharon did not meet her burden to overcome the presumption that Martin was subject to undue influence and reverse.

FACTS AND PROCEDURAL BACKGROUND[2]

1. *The marriage*

Martin and Sharon married on August 17, 2007. On August 20, 2015, Sharon filed a petition of dissolution of marriage; the petition indicated the parties separated on May 1, 2015.[3] The couple did not have any children together. Sharon had two adult children. Martin inherited about $1.2-1.5 million from his mother before the couple married.

At the beginning of their marriage, the couple lived in Martin's parents' house that he had inherited. During the marriage, Martin sold his parents' house and, with the proceeds, purchased the couple's home in Glendora (Glendora property) for about $400,000 in cash. In August 2010, title to the Glendora

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[2] We state the facts in the light most favorable to the judgment.

[3] Martin filed for divorce in 2009, but dismissed the petition. At the time, Sharon was unaware he had filed for divorce.

property was recorded in the names of Martin and Sharon, as community property with right of survivorship.

Sharon worked as a Head Start preschool teacher in the Baldwin Park school district throughout the marriage. Martin did not work during the marriage. He suffers from bi-polar disorder and has not been regularly employed in 25-30 years.

2. *The transfer of the Glendora property*

By 2014, Martin had spent his inheritance, was in debt, and had resorted to panhandling. He wanted to borrow money against the Glendora property, which had no mortgage, but he did not believe he would qualify for a loan due to his bad credit.

"[D]esperate for money," Martin came up with the idea to transfer the Glendora property to Sharon so that she could obtain a loan using the house as collateral and give Martin cash from the loan proceeds. Martin wanted half the value of the house. He testified he believed half the value was $240,000 and Sharon would borrow the money to pay him that amount. The couple would then divorce and Sharon would keep the house.

Sharon retained an attorney, Marjorie Archer, who prepared the Interspousal Deed to enable Martin to grant the Glendora property to Sharon as her separate property (interspousal transfer deed). The couple went to Archer's office and signed the interspousal transfer deed on May 22, 2015, which was recorded a month later.

Sharon then attempted to obtain a loan. She qualified to borrow only $104,000 against the Glendora property. The bank required her first to pay off car loans and credit card debt, totaling $22,335, from the loan proceeds, leaving a balance of $77,170.52 after deduction of loan-related expenses. Escrow closed on September 17, 2015.

3. *The stipulated judgment*

Archer prepared a stipulated judgment of dissolution of marriage for the couple's signature. Sharon gave Archer the information to include in the stipulated judgment based on what Martin "wanted." Sharon testified that Martin only wanted money out of the property; he did not want spousal support, any of her pension benefits, or the furniture in the Glendora property. She testified she discussed the terms of the stipulated judgment with Martin "several times before [they] actually signed it."

Martin testified he did not remember the details of discussions with Sharon, other than he wanted money from the house. He had no recollection of discussing spousal support or Sharon's pension. On cross examination, Martin testified he did not tell Sharon he wanted spousal support or that he did not want spousal support. He testified they did not discuss pension benefits, but did discuss credit card debt—he was willing to pay his credit card debt. Martin testified on direct and cross-examination that he and Sharon discussed "splitting the house 50-50."

At the trial, Archer testified she never discussed the terms of the stipulated judgment with Martin that she could recall, and Martin was not her client. She was aware he was unemployed.

The stipulated judgment provides in pertinent part:

- neither party will pay spousal support;
- the Glendora property, two cars, financial accounts and funds in Sharon's name, Sharon's pension benefits, and furniture and personal items in her possession are awarded to Sharon as her separate property;
- financial accounts and funds in Martin's name and furniture and personal items in his possession are awarded to Martin as his separate property;

- Sharon would pay community debt from three credit cards;
- Martin would pay community debt from eight credit cards/accounts; and
- Sharon would pay Martin $45,000 as an "equalization payment" that he acknowledged receiving on September 30, 2015.

The stipulated judgment also includes the parties' acknowledgement, among other things, that Martin chose to be self-represented and Sharon had retained Archer, that the parties entered into the stipulated judgment knowingly and without duress and intended to be bound by it, and that they waived their right to an equal division of community property or obligations. Sharon, Martin, and Archer all signed the stipulated judgment on September 30, 2015. Archer testified the parties did not sign the stipulated judgment at her office, and that she was not present when they executed the document. Her "recollection was that it was to be signed at a bank with a notary."

Martin received two checks from the Glendora property loan proceeds, one for $4,550 dated September 29, 2015, and one for $40,000 dated September 30, 2015. He testified he did not read the stipulated judgment before signing it because he "took Sharon at her word, that she would split the house down half and half." He testified he would not have signed the stipulated judgment if he had known he was only getting $45,000.

4. *The dispute over the stipulated judgment*

Unsatisfied with the $45,000, Martin contacted the attorney who had filed his 2009 divorce petition, Keith Bregman, and retained him in this matter in early October 2015. Bregman then called Archer. Archer testified that Bregman told her he was concerned the stipulated judgment provided an unequal division of property and Martin was not capable of entering into

the agreement. Archer had intended to submit the stipulated judgment to the court, but did not do so after speaking to Bregman.

On October 13, 2015, Martin, through Bregman, filed a response to the petition for dissolution. In the response, Martin requested spousal support, attorney fees, and damages for breach of fiduciary duty. Martin also filed a separate request for orders on October 29, 2015, asking for attorney fees, spousal support, an order requiring Sharon to vacate the Glendora property or, alternatively, to pay Martin its rental value, and an order giving Martin exclusive control of the Glendora property. He included an income and expense declaration.

Sharon, now represented by new counsel, filed a responsive declaration contesting Martin's request for orders on January 15, 2016. In her declaration, Sharon asked the court to enforce the stipulated judgment and attached it, as well as the deeds for the Glendora property. She too filed an income and expense declaration. The matter was set for a contested hearing in April.

Sharon again retained new counsel and filed another income and expense declaration on February 19, 2016. Martin filed his attorney's declaration attaching various exhibits and deposition testimony in support of the "issue of setting aside judgment," presumably to be heard at the April hearing. Martin also filed another income and expense declaration and reply declaration before the April hearing, as well as a "trial brief" on the "issue of setting aside the stipulation for judgment."

After the matter was heard in April, the court continued the matter for an evidentiary hearing in July. At the April hearing, the court apparently had "directed" Sharon to file a request for an order to enforce the proposed stipulated judgment, and Martin to file a formal motion to set it aside.

As directed, on June 23, 2016, Martin filed a request for order to set aside the proposed judgment under section 473 of the Code of Civil Procedure, on equitable grounds, and on the ground of breach of fiduciary duty. The request to set aside the proposed judgment included Martin's declaration, his attorney's declaration attaching exhibits and deposition testimony, much of which had been filed previously, and a memorandum of points and authorities. Sharon did not file a response.

At the beginning of the July hearing, the court noted Sharon had not filed any responsive papers to Martin's request to set aside the proposed judgment. Sharon's position was that her responsive declaration raised all of her objections and had asked the court to enforce the stipulated judgment. In other words, an additional motion or response was unnecessary as Sharon had requested enforcement of the stipulated judgment already. The court replied, "All right. Thank you very much."

At the contested hearing, the court received documentary evidence, including the parties' declarations and previously-filed exhibits, including the deposition testimony of Sharon and Archer. The court also heard testimony from Martin's psychiatrist (Dr. Said Jacob), Sharon's former attorney (Archer), Martin, and Sharon. After the parties rested, the court continued the matter to August 1, 2016 for closing arguments. The court heard argument from counsel and then announced its "oral tentative intended statement of decision" or "memorandum of intended decision orally stated by the court." The court concluded the stipulated judgment was enforceable and section 720 of the Family Code "ha[d] been met." The court also found that under the cases *Mathews*, *Delaney*, *Haines*, and *Benson* the stipulated judgment was an enforceable agreement

between the parties.[4] The court recognized it was "unfortunate that the consequences are rather severe as between the parties, but the court doesn't intervene or interfere with negotiated settlements between parties that are done post filing of dissolution, and prior to signing of the judgment."

After Martin's counsel inquired about whether the court wished "to address the issue of code of civil procedure section 473," the court responded, "Yes. I find that this was not inadvertence or mistake. He had full knowledge and participated, and he also had access to counsel." When asked, "Is the court not considering or finding that Mr. Jerris agreed to accept $44,550?" the court responded, "The Court finds that this judgment sets forth the agreement of the parties[, w]hich was negotiated at a[n] arm's length transaction."

The trial court then stated that Sharon's counsel was to prepare the statement of decision based upon the court's oral memorandum of intended decision. Martin's attorney then requested a statement of decision. The court stated, "Please prepare the intended statement of decision. If there are no objections within 10 days of it being served on the other side . . . ." "then I expect the findings and order to be prepared within 20 days after that and submitted for signature." Its August 1, 2016 minute order states, "The Court finds that the Judgment is enforceable. . . . Petitioner is to prepare the

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[4] *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624 (*Mathews*); *In re Marriage of Delaney* (2003) 111 Cal.App.4th 991 (*Delaney*); and *In re Marriage of Haines* (1995) 33 Cal.App.4th 277 (*Haines*) discuss the presumption of undue influence applied in enforcing unequal marital transactions. *In re Marriage of Benson* (2005) 36 Cal.4th 1096 also discusses the requirements for a valid transmutation of community property to separate property.

Statement of Decision." The court signed and entered the judgment that day. No statement of decision was filed, according to the record.[5]

Martin filed a timely notice of appeal from the "Judgment entered on August 1, 2016, and . . . the order denying . . . Martin['s] . . . Motion to Set Aside Proposed Stipulated Judgment not yet formally entered."

DISCUSSION

1. *Initial procedural issues*

a. *Martin's procedural contentions*

Martin contends the judgment must be set aside on procedural grounds because (1) it was not properly presented to the court for entry of judgment as a default or uncontested matter; (2) mandatory declarations of disclosure were not exchanged; and (3) Sharon failed to file a request for order to have the stipulated judgment entered as a judgment under section 664.6 of the Code of Civil Procedure.

As to Martin's first contention, he argues the trial court had no authority to sign the judgment because the matter was contested, and the judgment was not submitted as a default or uncontested matter. He cites no authority to support that contention. (*Phillips v. Campbell* (2016) 2 Cal.App.5th 844, 853 (*Phillips*) [" ' "[t]o demonstrate error, appellant must present meaningful legal analysis supported by citations to authority" ' "].) We find this contention has no merit.

As to Martin's second contention, he contends the judgment must be set aside because the Stipulation and Waiver of Final

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[5] Martin does not appear to assign any error to the lack of a written statement of decision after he had requested one. We note the hearing lasted less than eight hours. (See Code Civ. Proc. § 632.)

Declaration of Disclosure (disclosure waiver) signed by the parties on September 30, 2015, states the parties complied with Family Code section 2104[6] by exchanging preliminary declarations of disclosure and income and expense declarations when they had not done so. Martin argues Sharon perjured herself by signing the disclosure waiver because she did not serve her preliminary declaration of disclosure until February 2016, requiring the judgment to be set aside. Of course, Martin also did not serve any disclosures on Sharon until after September 30, 2015. (*In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 527 [right to set aside judgment under section 2107(d) based on failure to comply with disclosure requirements limited to those "who themselves comply with the disclosure requirements"].) In any event, we need not consider whether the parties complied with or waived compliance with section 2104. Martin never raised the issue nor argued to the trial court how he was prejudiced by any alleged noncompliance. (*Steiner*, at p. 523 [no automatic right to reversal absent showing of "a miscarriage of justice"].) He thus has forfeited the issue on appeal. (*Phillips*, *supra*, 2 Cal.App.5th at p. 853 [" 'Points not raised in the trial court will not be considered on appeal.' "].)

Finally, Martin also does not cite any authority to support his contention that the trial court lacked authority to sign the stipulated judgment because Sharon failed to file a motion to enforce it under section 664.6 of the Code of Civil Procedure (section 664.6). He argues the stipulated judgment was not before the court. Because Martin's contention concerns the trial court's authority to consider the enforcement of the stipulated judgment, we address it.

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[6] Unless otherwise indicated, all future statutory references are to the Family Code.

Section 664.6 provides:

> "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

Here, the parties' stipulated judgment complied with the requirements of section 664.6: it was signed by both parties outside the presence of the court and Martin's signature was notarized. Although Sharon did not make a separate motion under section 664.6 to enforce the stipulated judgment, she did ask the court to enforce it in her January 2016 responsive declaration.

At the July 2016 hearing, Sharon's attorney explained her position and the court apparently accepted it. Martin received that responsive declaration months before the hearing and, therefore, had ample notice that Sharon intended to enforce the stipulated judgment. He even filed a reply in response to Sharon's declaration and a trial brief on the "issue of setting aside the stipulation for judgment" *before* the court directed him to file a formal request to set it aside. Thus, he had an opportunity to argue why the stipulated judgment should not be enforced, but set aside, and the trial court received the evidence he presented in support of that argument at the July 2016 hearing. Accordingly, Martin has not shown how he was prejudiced by the court's implied treatment of Sharon's request in

her responsive declaration as a motion under section 664.6 to enforce the stipulated judgment.

As Sharon notes, "[i]t is . . . well established that courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) Thus, courts may "amend and control [their] process and orders so as to make them conform to law and justice." (Code Civ. Proc. § 128, subd. (a)(8).) Further, section 664.6 is not the "exclusive" method for enforcing a property settlement agreement, but a " ' "summary procedure available when certain prerequisites are satisfied." ' " (*In re Marriage of Woolsey* (2013) 220 Cal.App.4th 881, 898 (*Woolsey*).)

We conclude the trial court did not err in exercising its inherent authority to treat Sharon's request to enforce the stipulated judgment in her responsive declaration as a motion to enforce the agreement under section 664.6.

b. *Sharon's contention Martin's appeal from the denial of his motion to set aside the stipulated judgment should be dismissed*

Sharon contends Martin's appeal from the trial court's denial of Martin's motion to set aside the judgment under section 473 of the Code of Civil Procedure (section 473) must be dismissed because no judgment had been entered to set aside.

We do not construe Martin's motion to set aside the stipulated judgment as a motion for relief under section 473. And, with no judgment to set aside at the time the motion was made, the trial court did not either. Rather, at the July 2016 hearing, the trial court recognized Martin's motion "as a motion to set aside a proposed settlement or judgment." Thus, the court did not treat the motion to set aside as prematurely asking for relief from an *entered judgment*. Given the court directed Martin

to bring a formal motion to set aside the stipulated judgment,[7] we can infer the court intended to consider that motion as one to set aside the *stipulation* itself and to hear Sharon's request for entry of the stipulated judgment with Martin's request that it not be entered in a single proceeding. (See *Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 930 [explaining " ' "[t]he nature of a motion is determined by the nature of the relief sought, not by the label attached to it" ' "; trial court has inherent authority to " 'construe a motion bearing one label as a different type of motion' "].)

And, as Sharon notes, after the July 2016 hearing, nothing was left to decide. A further hearing on a section 664.6 motion or a motion to set aside under the Family Code or section 473 after entry of judgment would have involved presentation of the same evidence and arguments. Judicial economy (and savings of fees and costs for the parties) warranted considering all issues presented in one proceeding and, under these particular circumstances, it was within the trial court's inherent authority to do so. (See authorities cited *ante*.)

In effect, the trial court granted Sharon's request to enforce the stipulated judgment, treated as a motion to enforce the agreement under section 664.6, and denied Martin's motion to set the parties' agreement aside. Thus, we treat Martin's appeal as a single appeal from the trial court's entry of judgment enforcing the parties' stipulated judgment, an appealable final judgment.[8]

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[7] We do not know if the trial court directed Martin to file a motion under section 473 specifically as the transcript from the April hearing is not part of the record.

[8] Martin's notice of appeal indicates he appeals from the judgment entered on August 1, 2016 *and* the order denying Martin's motion to set aside the proposed stipulated judgment.

(See, e.g., *Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1251 ["a judgment on an order granting a motion to enforce settlement under section 664.6 is appealable"].) Despite Sharon's contention, therefore, our review of Martin's appeal from the judgment naturally may include a review of the trial court's decision to deny Martin's motion to set aside the stipulated judgment and grant Sharon's request to enforce it. (Code Civ. Proc. § 906 [on appeal from final judgment, "the reviewing court may review . . . any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the rights of a party"]; see, e.g., *In re Marriage of Moore* (1980) 113 Cal.App.3d 22, 25-26 [addressing whether trial court abused its discretion in finding wife knowingly waived her right to spousal support, pension benefits, and attorney fees on appeal from portions of dissolution judgment entered after court denied wife's motion to set aside separation agreement].)

2. *The substantive issue on appeal—the enforceability of the stipulated judgment*

The stipulated judgment indisputedly reflects an unequal distribution of property greatly favoring Sharon. As we discuss below, that transaction was subject to a presumption of undue influence as a matter of law. In determining whether to enforce, i.e., enter, the stipulated judgment, or to set it aside and set the matter for trial, the court was charged with determining whether Sharon met her burden to show Martin entered the stipulated judgment "freely and voluntarily . . ., with full knowledge of all the facts, and with a complete understanding of its effect." (*Mathews, supra,* 133 Cal.App.4th at p. 630.) The trial court concluded he had.

In his motion to set aside, Martin generally argued he was subject to Sharon's undue influence to sign the stipulated

judgment, he was mistaken as to the true facts when he signed it, and Sharon breached her fiduciary duty to him. Because the stipulated judgment is subject to the presumption of undue influence, Martin's contentions as to why it should have been set aside fall within the scope of our analysis below of whether substantial evidence supports the trial court's finding that Sharon rebutted the presumption.[9] We therefore need not separately address each and every specific ground on which Martin based his motion to set aside the stipulated judgment. (See *In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 88 (*Kieturakis*) [assuming for purposes of opinion that "the concept of 'undue influence' in spousal transactions is broad enough to subsume" the potential grounds of fraud, perjury, duress, mental incapacity, and mistake asserted by spouse to set aside judgment incorporating marital settlement agreement].)

a. *Applicable law and standard of review*

As a general rule, "property acquired during marriage by either spouse other than by gift or inheritance is community property unless traceable to a separate property source." (*Haines, supra,* 33 Cal.App.4th at pp. 289-290; § 760.) California

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[9] The trial court did not state explicitly that Sharon rebutted the presumption of undue influence, but in finding the stipulated judgment enforceable, the court specifically stated the stipulated judgment was "an enforceable agreement between the parties" under "*Delaney, Haines* . . . *Benson* and then *Mathews*." Those cases all address the presumption of undue influence applied in transactions between spouses where one spouse is advantaged over the other. The trial court also found "720 has been met." Section 720 refers to spouses' mutual obligations and section 721 in turn addresses transactions between spouses. Based on these statements, we conclude the trial court found Sharon met her burden to overcome the presumption of undue influence.

courts generally must divide the community estate of parties to a dissolution proceeding equally. (§ 2550.) The parties, however, " 'can agree on a lopsided division of community property, but only if it is evidenced (1) by a written agreement of the parties; or (2) by an oral stipulation of the parties in open court.' " (*Woolsey, supra,* 220 Cal.App.4th at p. 897.) " ' "A property settlement agreement, therefore, that is not tainted by fraud or compulsion or is not in violation of the confidential relationship of the parties is valid and binding on the court." ' " (*Id.* at pp. 897-898.)

Section 721, subdivision (b) describes the confidential relationship of spouses. It provides 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 confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners." (§ 721, subd. (b).)

"In view of this fiduciary relationship, '[w]hen an interspousal transaction advantages one spouse, "[t]he law, from considerations of public policy, presumes such transactions to have been induced by undue influence." ' "[10] (*Kieturakis, supra*, 138 Cal.App.4th at p. 84.) "The burden of rebutting the

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[10] Spouses may "transmute" property from community property to separate property or vice versa. (§ 850.) To be valid, the transmutation must be "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).) Appellant does not contend the stipulated judgment is invalid under this provision.

presumption of undue influence is on the spouse who acquired an advantage or benefit from the transaction." (*Mathews, supra,* 133 Cal.App.4th at p. 630.)

To overcome the presumption, "[t]he advantaged spouse must show, by a preponderance of evidence, that his or her advantage was not gained in violation of the [parties'] fiduciary relationship." (*In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 344.) Thus, it was Sharon's burden to prove Martin'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." (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 738-739 (*Burkle*).) "The question 'whether the spouse gaining an advantage has overcome the presumption of undue influence is a question for the trier of fact, whose decision will not be reversed on appeal if supported by substantial evidence.' " (*Id.* at p. 737.) " 'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

Under this substantial evidence standard of review, "we determine from the entire record whether there is substantial evidence, contradicted or uncontradicted, which supports the trial court's factual determinations." (*In re Marriage of Howell* (2011) 195 Cal.App.4th 1062, 1078.) We examine this evidence in the light most favorable to the prevailing party—here, Sharon—" 'giving [her] the benefit of every reasonable inference and resolving conflicts in support of the judgment.' " (*Ibid.*) "In that regard, it is well established that the trial court weighs the evidence and determines issues of credibility and these determinations and assessments are binding and conclusive on the appellate court." (*In re Marriage of Hill & Dittmer* (2011) 202 Cal.App.4th 1046, 1051-1052.) Further, "neither conflicts in the

evidence nor ' "testimony which is subject to justifiable suspicion . . . justifi[ies] the reversal of a judgment." ' " (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.) Rather, testimony believed by the trial court "may be rejected only when it is inherently improbable or incredible, i.e., ' "unbelievable *per se*," ' physically impossible or ' "wholly unacceptable to reasonable minds." ' " (*Ibid.*)

" '[T]he issue is not whether there is evidence in the record to support a different finding, but whether there is some evidence that, if believed, would support the findings of the trier of fact.' " (*In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 703.) As the appellant, Martin bears the burden "to show that the evidence is insufficient to support the trial court's findings." (*In re E.M.* (2014) 228 Cal.App.4th 828, 839.)

Sharon concedes the stipulated judgment was subject to the presumption of undue influence and that she had the burden of proof to rebut it. Thus, we need only determine if substantial evidence supports the trial court's implied finding Sharon met her burden to rebut the presumption.

b. *The interspousal transfer deed*

Substantial evidence demonstrates Martin transferred the Glendora property to Sharon voluntarily, with full knowledge of the facts and understanding of the effect of the transfer. The undisputed evidence established Martin executed the interspousal transfer deed with the intent Sharon would take out a loan from the property and pay him from the proceeds of the loan. Sharon credibly testified the plan was Martin's idea. The evidence demonstrated that due to his bad credit and lack of employment, Martin believed he could not qualify for a loan to obtain cash from the property if the property remained in Martin and Sharon's name. Although Sharon's attorney prepared the interspousal transfer deed for Martin's signature, substantial

evidence supports the finding that Martin was not influenced by Sharon when he executed the deed, which was his idea. He therefore voluntarily executed the deed with full knowledge of the facts.

This same evidence also shows he understood the effect of the transfer. And, he had prior experience with signing documents to purchase the Glendora property, having specifically taken title in both his and Sharon's name, rather than in his name alone. We conclude, therefore, substantial evidence supports a finding that Sharon overcame the presumption of undue influence with respect to Martin's execution of the interspousal transfer deed. (See *Mathews, supra*, 133 Cal.App.4th at pp. 631-632 [wife who quitclaimed her interest in family residence to husband to obtain a lower interest rate on mortgage entered transaction voluntarily, knowingly, and with a complete understanding of the effect of the transfer].)

c. *The stipulated judgment*

i. *Initial matters*

As we have said, the trial court expressly found the stipulated judgment reflected the parties' agreement, and impliedly found Sharon met her burden to prove Martin was not subject to her undue influence when he executed the stipulated judgment. The court emphasized that it considers "the credibility of each party or witness that testifies in the courtroom in terms of all 11 conditions of [Evidence Code section] 780."[11] We also note the parties gave conflicting testimony in several areas. Although

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[11] Evidence Code section 780 sets forth 11 nonexclusive criteria the finder of fact may consider to assess a witness's credibility, including, inter alia, the witness's demeanor, ability to recall a matter, and prior consistent or inconsistent statements. (Evid. Code § 780, subds. (a), (c), (g) & (h).)

Sharon's deposition testimony, declaration, and hearing testimony were not always consistent, on this record we cannot say her testimony was "wholly unacceptable" to reasonable minds. Thus, under our standard of review, we are bound by the trial court's credibility determinations where the parties' testimony conflicts.

We also acknowledge that when the trial court announced its oral tentative decision, it recognized as an initial matter that the testimony conflicted over where the stipulated judgment was signed. The trial court credited Archer's testimony that the stipulated judgment was not signed in her office or in her presence. She recalled the stipulation was to be signed at a bank. Sharon expressed confusion as to where the stipulated judgment was signed. Ultimately, at the July 2016 hearing, she recalled she picked up the stipulated judgment from under Archer's office door mat and met Martin and a notary at a Carl's Jr. At the hearing and in multiple declarations, Martin insisted he signed the stipulated judgment at Archer's office. In his declaration, he also stated he signed papers at Carl's Jr., but did not recall what they were. The court expressly concluded this conflicting testimony was "not sufficient to set aside the fact that [the stipulated judgment] was executed knowingly and intelligently."

Resolving the conflicting testimony in Sharon's favor, substantial evidence supports the conclusion Martin did not sign the stipulated judgment in Archer's presence or at her office. We agree that whether he signed it at a bank or at a restaurant does not affect whether Martin executed the stipulation voluntarily and knowingly.

ii. Factors considered to determine if Sharon rebutted the presumption of undue influence

We agree substantial evidence supports a finding that Martin entered into the stipulated judgment voluntarily and

understood its terms and its effect. We find substantial evidence does not support a finding that Martin had full knowledge of all the relevant facts when he entered the agreement, however.

(a) Substantial evidence demonstrates Martin voluntarily entered the stipulation

Essentially, Martin contends Sharon took advantage of his desperation. Martin contends the stipulated judgment should have been set aside because he was so desperate for money that he would have signed anything Sharon told him to sign if it meant he would get his money. Substantial evidence supports a finding that he voluntarily executed the stipulated judgment without coercion.

First, as we have said, the undisputed evidence demonstrates Martin wanted to transfer the Glendora property to Sharon so that she could obtain a loan to pay him cash and then get divorced. The plan was his. The stipulated judgment necessarily was part of that agreement.

The evidence is undisputed that Martin signed the stipulated judgment, and initialed the provision agreeing to waive any right to receive spousal support, before a notary. And, as the trial court observed, the stipulated judgment was not signed until four months after Martin executed the interspousal transfer deed, after the parties had separated, and over a month after Sharon filed for divorce. The trial court, therefore, reasonably could infer Martin had time to deliberate and to change his mind about his plan before signing the stipulated judgment.

We recognize that Sharon was represented by counsel in connection with the stipulated judgment and Martin was not. The trial court explicitly found, however, that Martin had the opportunity to consult counsel before signing the stipulated judgment, but chose not to do so. Substantial evidence supports

this finding. Martin had known his attorney for 10 years and had retained him in 2009 to file for divorce. Although Sharon personally did not tell Martin he should hire his own attorney, by signing the stipulated judgment he acknowledged he had the right to separate counsel, but chose to be self-represented. Nothing in the record suggests he was prevented from consulting with his attorney at any time or that his attorney was unavailable. Further, Martin had no trouble retaining an attorney immediately after he signed the stipulated judgment, who officially appeared in the case within two weeks of Martin having signed the judgment.

Thus, this is not a situation like that in *Haines*, relied on by Martin. There, the wife asked her estranged husband to co-sign a loan so that she could buy her own car. (*Haines, supra*, 33 Cal.App.4th at p. 284.) On the way to co-sign the loan, the husband stopped at a store that had a notary and told his wife that if she did not sign a quitclaim deed transferring her interest in their house to him, he would not co-sign the loan. (*Ibid.*) Feeling she had no choice, the wife signed the deed. She testified she did not know her husband was going to stop at the notary and that she told him it was unfair. (*Ibid.*) In refusing to set aside the quit claim deed, the trial court incorrectly assigned the burden of proof to the wife to prove by clear and convincing evidence that she had signed the deed under undue influence, duress, deceit, and/or constructive fraud, but did find the wife had met the preponderance of the evidence standard on those claims. (*Id.* at p. 286.) The court of appeal concluded that, if the husband "had been given the initial burden to rebut the presumption that he gained an advantage in violation of the confidential relationship, he could not have met his burden of producing evidence—given the trial court's factual findings that

[the wife] had established the contract defenses by a preponderance of evidence." (*Id.* at p. 297.)

The wife in *Haines* clearly did not voluntarily sign the deed; she did so under threat of her husband's refusal to co-sign a car loan she needed. Here, the parties agree Martin was desperate for money. Although Sharon testified she would not give Martin the check for $45,000 until he signed the stipulated judgment, the trial court reasonably could find her actions were not coercive. Sharon reasonably would not want to hand Martin a check without having him sign the stipulated judgment first. Martin may have felt he had no choice but to sign the stipulated judgment to get his check, but unlike the wife in *Haines*, Martin's desperation was of his own making. The stipulated judgment arose from *Martin's* plan to transfer the house to Sharon, so that *he* could obtain immediate cash. Viewing the conflicting evidence in favor of Sharon, it was Martin who wanted a divorce to solve his financial problems. This idea was not new. In 2009 he secretly had filed for divorce when he was experiencing financial troubles. And, Sharon testified she never would have borrowed against the house had Martin not wanted her to do so. The wife in *Haines*, on the other hand, was not a willing participant in the transaction. She was blindsided by her husband into giving up her interest in the couple's property.

In *Haines*, the parties also had not filed for divorce yet. (*Haines*, *supra*, 33 Cal.App.4th at p. 285.) Here, Sharon, as Martin had wanted,[12] already had filed for divorce at the time they signed the stipulated judgment. Sharon credibly testified

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[12] Martin testified he did not ask Sharon for a divorce, but had mentioned it. Sharon, on the other hand, testified Martin asked her daily for a divorce. We resolve this conflicting testimony in Sharon's favor.

that she had discussed the terms of the stipulated judgment with Martin before they met to sign the agreement. Viewing the evidence in the light most favorable to Sharon, we reasonably can infer that Martin understood he would not receive his check until he executed the stipulated judgment. And, as we have said, Martin could have consulted with his attorney before he signed the stipulation, but chose not to do so. Further, Martin purposefully met Sharon to sign the stipulated judgment whereas the wife in *Haines* was caught unaware. Accordingly, we conclude substantial evidence supports a finding that Martin was not coerced into signing the stipulated judgment due to his desperation for money, but did so voluntarily.

(b) Substantial evidence demonstrates Martin knew and understood the terms and effect of the stipulated judgment

Sharon presented credible evidence from which the trial court could conclude that Martin knew and understood the terms of the stipulated judgment when he signed it.

The parties agree that Martin told Sharon he wanted half the value of the house. The evidence also is undisputed that Sharon was unable to obtain a loan for half the value of the house. The parties' testimony conflicted, however, as to what amount they ultimately agreed Sharon would pay Martin before they signed the stipulated judgment and whether Martin knew he would receive only $45,000.

Sharon testified at her deposition and at the July 2016 hearing that Martin did not tell her a specific amount of money he wanted her to "get"; "[h]e gave [her] all kinds of different figures." She testified she told him she did not know how much the lender would give her.

Martin declared he and Sharon orally agreed that Sharon would obtain a loan to pay him half of the value of the house,

which he estimated to be $480,000. He expected her to obtain a loan for $240,000 and give him that amount. When she could obtain a loan only for about $100,000, he declared she told him she would give him $50,000 from the loan and "the rest" later. At her deposition, Sharon testified she never agreed to pay Martin another $190,000. She also testified at the hearing that she discussed the terms of the stipulated judgment with Martin "several times" before he signed it.

As to the other terms of the stipulated judgment, Sharon testified Martin told her that he did not want spousal support or her pension benefits, only money from the house. In his declaration, Martin stated he did not understand the agreement provided that he was giving up spousal support and his interest in Sharon's pension. At the July hearing, on the other hand, Martin could not recall any of the details of the stipulated judgment or any of the details of his discussions with Sharon, other than "her word, that she would split the house down half and half." He had no recollection of discussing spousal support or Sharon's pension. Martin also testified he did not read the stipulated judgment before signing it.

We can reasonably infer that the trial court credited Sharon's testimony over Martin's. Construing the conflicting evidence in the light most favorable to Sharon, the trial court reasonably could conclude Sharon did not agree to pay Martin an amount greater than what she could obtain from a loan. The trial court impliedly credited Sharon's testimony that she and Martin discussed the terms of the stipulated judgment over Martin's testimony they did not. Although as an interested party Sharon's testimony may be subject to suspicion, it was not so incredible that we must reject it. The court reasonably could infer those discussions included the "equalization payment" of $45,000 set forth in the stipulation and Martin's waiver of

spousal benefits and waiver of any right to Sharon's pension. Martin may have wanted half the value of the house when he devised his plan, but substantial evidence supports his understanding that he would not be receiving that amount.

Further, the trial court expressed reservations about Martin's credibility. The court noted Martin testified multiple times that he did not recall what was said or was not said, what he signed, or when events occurred. For example, he had no memory of signing the interspousal transfer deed in May 2015, and recalled signing the stipulated judgment at Archer's office when Archer and Sharon both testified at the July 2016 hearing that the stipulated judgment was not signed there. The court emphasized Martin's inability to recall events at the hearing conflicted with his detailed recollections in his declaration. Martin argues this is not an uncommon occurrence, but inconsistent statements are a specific factor the trier of fact can, and did, consider when assessing credibility under section 780 of the Evidence Code.

Nor is Martin's acceptance of the unequal property division completely unreasonable. Having spent all his inheritance, the trial court could infer Martin was motivated to accept the unequal division so he could obtain money quickly, rather than wait for a court to determine the division of property, which could have required a sale of the Glendora property and payment of Martin's debts before he was able to obtain any cash from the house. By entering the stipulated judgment, Martin received the benefit he was after—quick cash.

Martin testified he would not have signed the stipulated judgment if he knew he would receive only $45,000. In his declaration he declared, "I was so desperate for money that I really did not care what was in the agreement as long as I was getting the money." But, Martin's choice not to read the

stipulated judgment does not negate his voluntary entry into the agreement, nor does it negate his knowledge and understanding of the terms of the agreement.

As we have said, when Martin signed the agreement, he acknowledged that he understood its terms. (See *In re Marriage of Lund* (2009) 174 Cal.App.4th 40, 56 [concluding that, where there was no testimony as to whether disadvantaged spouse understood the legal import of the transaction, "attestation to his understanding of the agreement served to rebut the presumption that he did not understand the legal import of the agreement"].) Also, as the trial court noted, Martin initialed the first page of the stipulation to indicate he "knowingly and voluntarily waive[d] any right to receive spousal support." On the next page, the agreement lists Sharon's pension benefits as part of the community property awarded to Sharon as her "sole and separate property." The provision regarding the $45,000 payment also is set forth in its own paragraph. " 'It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it.' " (*Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1588; see also Rest.2d Contracts, § 157, com. b, p. 417.) As we have said, substantial evidence supports the trial court's finding that Martin executed the stipulated judgment knowingly and voluntarily; thus, his failure to read its terms cannot excuse his performance.[13]

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[13] We also note Martin did not return the $44,550 after asserting the stipulated judgment was unenforceable.

(c) Substantial evidence supports a finding that Martin was capable of understanding the effect of the stipulated judgment

The evidence supports the trial court's finding that Martin was capable of entering the stipulated judgment and understanding its terms. The trial court explicitly found Martin "had full knowledge and participated, and he also had access to counsel. . . . [H]e did not discuss [the stipulated judgment with counsel] prior to signage . . . . But that doesn't mean he's not capable of reviewing it and signing it. . . . [T]he dissolution had been already signed and filed, and he had already participated with knowledge with an attorney on what the settlement was."

The trial court found credible the testimony of Martin's psychiatrist, who testified Martin suffers from bi-polar disorder. But the trial court further found that, "even the treating physician . . . was not able to testify that in his opinion [Martin's bi-polar disorder] would affect the ability for [Martin] to contract. He could not testify as to what his condition was at the time of these alleged transactions or these alleged transfers or acts." The court then concluded, "I have to find the parties fit. The bipolar syndrome is not sufficient in and of itself to set aside any agreements, because otherwise, every bipolar person in our society, which are in the hundreds of thousands[,] would not be able to contract. And that's not the status of the law."

The record supports the trial court's finding that Martin was capable of contracting. Although Martin's doctor testified his disorder sometimes could cause his judgment to be poor, as the court noted, he could not recall Martin's condition in May and September 2015, when Martin signed the interspousal transfer deed and stipulated judgment. The doctor gave examples of Martin's poor judgment as buying expensive watches he did not

need and selling one house to buy another against the doctor's advice. He testified Martin could read and understand English. We agree with the trial court's assessment of the doctor's testimony. It did not establish Martin was incapable of entering into and understanding the stipulated judgment.

Martin's condition was not like that of the husband in *Delaney, supra,* 111 Cal.App.4th 991, cited by Martin. There, the court of appeal upheld the trial court's finding that the wife failed to rebut the presumption of undue influence where the husband transferred his separate property into his and his wife's names so they could obtain a loan to remodel that property. (*Id.* at pp. 993-994.) The husband had entrusted all financial and legal matters to his wife due to a cognitive impairment affecting his reading comprehension. (*Id.* at pp. 994, 1000.) He did not question his wife's instruction that he needed to sign the grant deed. (*Id.* at p. 1000.) He did not know he had given his wife half of his property until he saw a property tax bill with both their names. (*Id.* at p. 994.)

Here, the evidence established Martin was capable of understanding and understood the effect of the stipulated judgment. No evidence was presented that Martin needed to rely on Sharon to understand the terms in the stipulated judgment, had Martin taken the time to read it, or that his reading comprehension was impaired by his bi-polar disorder, like the husband in *Delaney*. Also, at the time of the transaction in *Delaney*, the couple had not separated and, thus, the husband reasonably relied on his wife's instruction rather than seek separate counsel concerning the effect of the transaction. Martin and Sharon, on the other hand, already were separated at the time Martin signed the stipulated judgment. While they continued to owe fiduciary duties to one another, their relationship no longer was that of a couple. And, as we have said,

Martin had the time and opportunity to consult with an attorney before signing the stipulated judgment if he did not understand its terms or their effect. He also knew consultation with an attorney was advisable in a divorce, having consulted one when he filed for divorce in 2009.

(d) Substantial evidence does not support a finding that Martin had knowledge of all the facts

Substantial evidence, however, does not support that Martin entered the transaction with knowledge of *all* the facts relevant to the $45,000 equalization payment, even if he had read the agreement. First, the evidence undisputedly shows that he received $44,550, not $45,000. When he signed the stipulation he acknowledged receiving $45,000, but he was not given the check until after he signed the agreement. Thus, he could not know he had not received the full $45,000 when he signed.

More importantly, however, the undisputed evidence demonstrates Sharon received $77,170.52 from the bank. That is the balance indicated on the September 11, 2015 "Borrower's Estimated Closing Costs" for a first trust deed on the Glendora property (escrow statement), scheduled to close on September 17, 2015. Sharon provided no evidence, however, that she gave Martin this information before he signed the stipulated judgment.

Sharon testified she told Martin she could obtain a loan only for $104,000. And, as we have said, we can reasonably infer Martin understood that Sharon's payment to him would be limited to what she could get from the loan she could obtain instead of half the value of the house. This interpretation is supported by Sharon's deposition and hearing testimony confirming that Martin had given her different figures as to the amount he wanted from the house because she did not know how

much she could borrow. Yet, while Sharon testified she discussed the terms of the stipulation with Martin, she did not testify that she told Martin she had received over $77,000 in cash from the $104,000 loan. Based on the record, we can reasonably conclude that Sharon discussed only the $45,000 payment with Martin, not the net cash proceeds from the loan.[14] Without that information, we cannot say Martin agreed to the $45,000 payment with "full knowledge of the facts," particularly when that fact was exclusively in Sharon's control. Nothing in the record demonstrates he knew at the time that Sharon had kept over $32,000 of the cash disbursed.[15]

Similarly, substantial evidence also does not support a finding that Martin had full knowledge of all the facts when he voluntarily and knowingly agreed to waive spousal support and give up any interest he may have had in Sharon's pension. Sharon testified at her deposition that she never told Martin the value of her pension before he signed the stipulated judgment; she did not know it herself. She also testified she never showed Martin her paystubs. Accordingly, Martin did not have knowledge of or the ability to learn those values unless Sharon provided them to him. As we have said, Sharon and Martin

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[14] When asked how the $45,000 figure was arrived at during her deposition, Sharon could only respond that it was the amount Martin "agreed to," and that he did not want anything but cash. She also did not know where her prior attorney got the $50,000 figure she declared she agreed to pay Martin in her January 2016 responsive declaration.

[15] After subtracting the $44,500 paid to Martin from the $77,170.52 cash refund indicated on the escrow statement, Sharon received approximately $32,670. (On cross-examination, Sharon believed she received about $28,000.)

signed a disclosure waiver on September 30, 2015, stating they already had exchanged income and expense declarations. But, Sharon submitted no evidence that she actually provided Martin with an income and expense disclosure or its equivalent before he signed the stipulated judgment. That disclosure would have included her monthly income and deductions, including for her pension.

Without that information, Martin did not know the true value of what he may be giving up, nor did he have access to that information to review for himself. (Compare *Burkle, supra,* 139 Cal.App.4th at pp. 736, 739 [finding presumption of undue influence, if it had applied, rebutted where, *before* wife signed property agreement, husband made all relevant financial information available for review and had disclosed his reasonable estimate of the value of the community property].) Accordingly, Sharon did not rebut the presumption that Martin did not have full knowledge of all the facts relevant to the transaction.

d. *Sharon did not breach her fiduciary duty*

Martin separately contends the stipulated judgment should not have been enforced because Sharon breached her fiduciary duty. The trial court explicitly found Sharon did not breach her fiduciary duty; substantial evidence supports that finding. In its oral tentative statement of decision, the trial court emphasized the passage of time between the transactions: the interspousal transfer deed was signed after the May 1, 2015 separation date, and the judgment was signed over four months later—more than a month after the divorce petition had been filed. The court noted that parties in second or third marriages often do not want to go through litigation, "but, knowing the facts, settle their cases by agreement or stipulation . . . ." "[a]nd we don't go behind that unless we find there has been a true breach of fiduciary duty. I can't find that breach because of all this time factor involved."

The court, therefore, reasonably could conclude that Sharon did not rush Martin through the transaction in an attempt to take advantage of him, but entered their agreement in good faith. And, as we have said, Martin reasonably could have agreed to an unequal property settlement to obtain the benefit of quick cash.

Our conclusion that substantial evidence did not support a finding that Martin had full knowledge of all the facts when he entered the stipulation does not compel a finding that Sharon breached her fiduciary duty. Nothing in the record demonstrates Sharon concealed any separate or community assets in violation of her fiduciary duty to Martin. Although she may not have affirmatively told Martin the value of her pension, she did not know that value herself and Martin never asked about it. The evidence demonstrated Martin was aware Sharon worked as a teacher and received pension benefits. Certainly, nothing in the record demonstrates Sharon *misrepresented* or affirmatively concealed any facts affecting the value of the "marital assets." (*Burkle, supra*, 139 Cal.App.4th at p. 740.) (The lack of evidence that Sharon told Martin the amount she received from the loan is not the same as evidence that she affirmatively concealed that information.) Accordingly, the trial court did not err in finding Sharon did not breach her fiduciary duty.[16]

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[16] Martin also contends Sharon's direction to her attorney to prepare the stipulated judgment "based solely on information she gave to the attorney, which was extremely beneficial to her as opposed to Martin . . . could be construed as fraud." As we have said, the record does not support this contention.

DISPOSITION

The judgment of dissolution is reversed insofar as it affirms and incorporates the stipulated judgment of September 30, 2015. This case is remanded to the trial court for trial on the issues covered in the stipulated judgment, consistent with our findings. Under Family Code section 2341, the judgment's dissolution of the marriage status and restoration of the parties to the status of unmarried persons is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J