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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of ERIK and
ANGELICA BROWN.

B287731

(Los Angeles County
Super. Ct. No. KD087425)

ERIK BROWN,

Respondent,

v.

ANGELICA BROWN,

Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County, John A. Slawson, Judge. Affirmed.

Law Office of Randy W. Medina and Randy W. Medina, for
Appellant.

Cervantes & Donoso, Ramon Cervantes and Alesha Donoso,
for Respondent.

Angelica Therrien Brown appeals from the judgment entered after the dissolution of her 14-year marriage to Erik Brown. Therrien¹ contends the trial court erred in declining to enforce a marital settlement agreement between the parties that provided Therrien was to receive certain community real property in its entirety. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Settlement Agreement and Further Settlement Agreement

On June 21, 2013 Brown petitioned for dissolution of his marriage to Therrien. In March 2017 the parties signed a settlement agreement to resolve issues regarding property distribution. Under the agreement each party was to receive a one-half interest in an apartment building located on Cadwell Street in La Puente, California, subject to a \$100,000 reimbursement claim by Therrien pursuant to Family Code section 2640.² The agreement further provided Therrien would have 120 days from the determination of the fair market value of the Cadwell property to purchase Brown's interest in the property. If Therrien failed to purchase Brown's interest within that time, the property would be sold; and the proceeds divided equally between the parties. The settlement agreement was signed and entered by the family law court as an order on March 15, 2017. On the same day the court entered a status-only judgment of dissolution.

¹ Because Angelica Brown's former name, Therrien, was restored in the judgment of dissolution, we refer to her by that surname and refer to Erik Brown as Brown.

² Statutory references are to this code.

In May 2017 the parties signed a document titled “Further Marital Settlement Agreement.” This agreement stated it “modifies the Marital Settlement Agreement filed with the court on March 15, 2017” by awarding the entire Cadwell property to Therrien “as her sole and separate property, without offset.” Although the further marital settlement agreement was lodged with the court on June 9, 2017, it was not signed by the court.

2. Evidence at Trial

The parties appeared in August 2017 for trial on the reserved issue of the value of the Cadwell property and another parcel of community real property. At that time Therrien’s counsel informed the court the parties’ further marital settlement agreement awarded the entirety of the Cadwell property to Therrien, thus a trial on valuation was moot. Brown’s counsel argued the May 2017 agreement was unenforceable because Brown had not understood the effect of the agreement at the time he signed it.

The court heard testimony on the circumstances surrounding the signing of the further marital settlement agreement over three days in September and October 2017. Brown testified he had been suffering from what he called a “100 percent mental breakdown” in May and June of 2017. He was depressed, paranoid and believed government agents were following him. Ultimately, Brown took a leave of absence from his job to seek medical treatment.

On May 22, 2017 Brown sent Therrien a text message stating, “Give me a call when you can. I need to tell you

something. Vip. Its for Shantell.”³ The parties spoke by telephone that day; and according to Brown, he told Therrien he wanted to give his interest in the Cadwell property to Shantell. Brown explained he wanted Shantell to have his interest because he felt, “at that moment in time, I was basically saying my last good-byes.” After this conversation Therrien called her attorney and asked him to draft what would become the further marital settlement agreement. The draft was sent to Brown’s attorney the same day.

At some point during the next few days Brown met with his attorney to review the draft agreement. He testified he looked at it only briefly but did not read it. On May 24, 2017 Therrien sent Brown a text message asking, “Did your attorney do the papers?” Brown responded that his attorney wanted further details included in the agreement regarding the value of other real property and amounts to be paid to Brown’s mother as repayment of a community debt. Brown wrote, “Shantell will get the apartments. My mom just need to be paid. We need to think of something fair on paper between both of us. I’m sorry for reaching out to you, but the apartments will be Shantells. I hope you understand. I’m going through a hard time right now, I wish you understood. Sorry.”

On May 25, 2017 Brown went to Therrien’s house to speak with her. He testified he told Therrien he wanted his share of the Cadwell property to be given to Shantell. According to Brown, he told Therrien about the paranoia and depression he was

³ Shantell Therrien is Therrien’s adult daughter and Brown’s stepdaughter. Because she shares a surname with Therrien, we refer to Shantell by her first name.

experiencing; and Therrien offered to help him obtain medical treatment.

On May 27, 2017 Brown went to Therrien's house to take Shantell to lunch. He testified that, when he arrived, Shantell gave him a copy of the further marital settlement agreement. Brown signed the document, and then he and Shantell took the agreement to be notarized. Brown left the signed and notarized document with Shantell and did not retain a copy.

Brown testified he did not read the agreement at the time he signed it or when it was notarized. He stated his understanding was the agreement would not be effective unless his attorney approved and signed it. When the court asked Brown why he signed the agreement without first speaking to his attorney, Brown replied, "I was just in a panic mode, and I was—I just panicked, and I went and signed it." Brown was questioned extensively by counsel and the court regarding his understanding of the effect of the agreement. Initially, in response to the question on cross-examination, "And you knew that in this document you were saying that the Cadwell property would be awarded to the respondent, correct?," Brown appeared to agree, stating, "Providing my mom got paid everything that she was supposed to get paid." However, upon further questioning Brown explained he thought the agreement provided the Cadwell property "would go to Shantell providing everything was read and signed by [my counsel], that everything was ok." Brown repeated this understanding multiple times, stating, "I didn't know I was giving [the Cadwell property] to [Therrien]. I thought it was for Shantell All I know is I had Shantell in mind, and that's what I thought I was signing because I didn't read the document at all."

Shantell testified in support of Therrien. Shantell recounted that Brown arrived at Therrien's house on May 27, 2017 and "right away he had a paper in his hand. He went straight to the coffee table in our living room and told me he wanted me to witness him signing." Shantell stated Brown told her the document "was a paper signing over the apartments to my mom."

Therrien initially testified that, when she spoke to Brown on May 22, 2017, he told her "that he was going to give [the Cadwell property] back to me, and he was not going to try to take it away from us where I would have to give him half." Upon further questioning about this conversation Therrien explained, "[Brown] informed me that he wanted to do the right thing, and he wanted to sign a paper to give the property back to Shantell, that he wanted to make sure that she would get it." Therrien repeated multiple times that it was her understanding Brown wanted to give the property to Shantell. After this conversation Therrien arranged for her lawyer to draft an agreement and send it to Brown's lawyer. Therrien stated Brown acted normally during their interactions in May 2017, and she never suggested he seek medical treatment.

3. The Family Court's Ruling

The family law court ruled the further marital settlement agreement was subject to the fiduciary-relationship principles in sections 721 and 2102, and, therefore, a presumption of undue influence applied. Crediting Brown's account of his understanding of the agreement, the court concluded Brown believed "the document that he signed was the document that was going to benefit his daughter. . . ." "He believed that the documentation created accomplished the goal that he wanted,

and the court finds that it didn't." Accordingly, the court found Therrien had failed to carry her burden to rebut the presumption of undue influence by a preponderance of the evidence and the agreement was unenforceable.

On December 19, 2017 the court entered a stipulated judgment on reserved issues, including division of community property. In accordance with the court's ruling, the judgment awarded one-half of the Cadwell community property to Brown and one-half to Therrien. On the same day the court entered a statement of decision explaining its ruling regarding the unenforceability of the further marital settlement agreement.

DISCUSSION

1. The Family Law Court Did Not Err by Applying the Undue Influence Presumption

a. Governing law and standard of review

"[E]ither spouse may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried." (§ 721, subd. (a).) In transactions between husband and wife, however, the spouses have a fiduciary relationship with one another and must act according to the highest duty of good faith and fair dealing: With certain exceptions not relevant here, "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, as provided in Sections 16403, 16404 and 16503 of the Corporations Code” (§ 721, subd. (b).)⁴

As a consequence of the fiduciary duties imposed by section 721, a presumption of undue influence attaches to certain agreements between the parties. (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 27 (*Bonds*) [“[t]he primary consequences of designating a relationship as fiduciary in nature are that the parties owe a duty of full disclosure, and that a presumption arises that a party who owes a fiduciary duty, and who secures a benefit through an agreement, has done so through undue influence”].) Thus, as a result of the fiduciary duty established by section 721, “whenever [spouses] enter into an agreement in which one party gains an advantage, the advantaged party bears the burden of demonstrating that the agreement was not obtained through undue influence” (*Bonds*, at p. 27.; accord, *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 730 (*Burkle*) [“the ‘advantage’ which raises a presumption of undue influence in a marital transaction involving a contractual exchange

⁴ The rights and duties of each spouse include, but are not limited to, “(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying. [¶] (2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions. [¶] (3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property.” (§ 721, subd. (b).)

between spouses must necessarily be an unfair advantage”].) While the fiduciary duty between spouses is created by statute, the presumption of undue influence is a product of common law public policy and equity considerations. (See *Bonds*, at p. 28 [“[i]t long has been the rule that ‘[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””]; *In re Estate of Cover* (1922) 188 Cal. 133, 143 [“in every transaction between [spouses] by which the superior party obtains a possible benefit, equity raises a presumption against its validity and casts upon that party the burden of proving affirmatively its compliance with equitable requisites and of thereby overcoming the presumption”].)

The fiduciary duties imposed by section 721, and by extension the resulting presumption of undue influence, continue beyond the dissolution of marriage and initial division of the parties’ assets and liabilities so long as any asset or liability has yet to be distributed: “From the date of separation to the date of distribution of the community or quasi-community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the assets and liabilities of the other party” (§ 2102, subd. (a)).⁵ Similarly, the fiduciary duties remain in place after it has been

⁵ The activities to which the duties of each party apply include, but are not limited to, accurate and complete disclosure of all assets and liabilities; accurate and complete written disclosure of any investment opportunity, business opportunity or income-producing opportunity; and the operation or management of a business or an interest in a business in which the community may have an interest. (§ 2102, subd. (a).)

decided how the community property will be divided until distribution of the property has been completed: “From the date that a valid, enforceable, and binding resolution of the disposition of the asset or liability in question is reached, until the asset or liability has actually been distributed, each party is subject to the standards provided in Section 721 as to all activities that affect the assets or liabilities of the other party. Once a particular asset or liability has been distributed, the duties and standards set forth in Section 721 shall end as to that asset or liability.” (§ 2102, subd. (b).)

The interpretation of sections 721 and 2102 and the question whether Therrien owed Brown fiduciary duties with respect to the Cadwell property at the time they signed the further marital settlement agreement are questions of law, which we review de novo. (*In re Marriage of E.U. & J.E.* (2012) 212 Cal.App.4th 1377, 1389 [de novo standard of review applies to court’s interpretation of statute and whether court applied correct legal standard]; see *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432; *In re R.C.* (2011) 196 Cal.App.4th 741, 748.)

b. *Thierren stood in a fiduciary relationship to Brown regarding the Cadwell property at the time he executed the further marital settlement agreement*

Due to the March 2017 status-only judgment, Therrien and Brown were no longer married in May 2017 when they entered the further marital settlement agreement. However, as of the date Brown signed the further agreement, the Cadwell property had not “actually been distributed” pursuant to the terms of the parties’ March 2017 marital settlement agreement. As discussed, the March 2017 agreement had specified, as an initial step, each

party was to receive a half interest in the property and then, as a second step, Therrien would purchase Brown's share or the property would be sold and the proceeds divided. As of the time of execution of the further marital settlement agreement, the cash distribution to Brown for his interest in the Cadwell property contemplated by the March 2017 agreement had not yet occurred. That the property remained a community asset over which the family law court retained jurisdiction is confirmed by the parties' characterization of the May 2017 agreement as a modification of the March 2017 settlement agreement, rather than a post-distribution or post-dissolution agreement.

Because the community asset had not been completely distributed, the fiduciary duties imposed by section 2102, subdivision (b), still applied "as to all activities that affect the assets or liabilities of the other party." (§ 2102, subd. (b).) Such "activities" certainly included an agreement in which Brown conveyed his ownership of the property. Accordingly, in May 2017 Therrien owed Brown fiduciary duties as to the Cadwell property, including "a duty of the highest good faith and fair dealing" and the duty to not "take any unfair advantage." (§ 721, subd. (b).) It follows that the presumption of undue influence applied to any transaction between the parties relating to the Cadwell property in which one party obtained an unfair advantage over the other.⁶

⁶ As discussed, for the undue influence presumption to arise the parties must be in a confidential relationship, or owe one another a fiduciary duty. In addition, the disputed transaction must result in an unfair advantage to one party. (*Burkle, supra*, 139 Cal.App.4th at p. 730.) Therrien's attorney conceded in the family law court that Therrien was the party "advantaged" by the further marital settlement agreement. Therrien did not argue

Therrien attempts to avoid this result by arguing that, even if the fiduciary duties contemplated by section 2102 apply, the presumption of undue influence does not. Therrien argues section 2102's incorporation of the "standards provided in Section 721" (§ 2102, subds. (a) & (b)) governs only the parties' post-separation disclosure obligations; she maintains the fiduciary duties imposed by section 721 on interspousal transactions are not incorporated into section 2102. Therrien cites no authority supporting her interpretation, which is contrary to the plain language of the statutes. Section 2102 explicitly states, "[E]ach

the admitted advantage was not "unfair" and has thus forfeited any such argument. (See *Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591-592 ["[a]ppellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider"]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 226 [issues not raised in the trial court cannot be raised for the first time on appeal].)

While Therrien has not directly argued on appeal that she was not unfairly advantaged by the further marital settlement agreement, she argues the family law court erred in finding "the transfer of real property for little or no consideration results in an unfair advantage to the receiving party and thus the presumption of undue influence arises." Therrien contends this general principle is incorrect as a matter of law because "[g]ifts between persons who are not in a confidential relationship are not presumptively invalid." Therrien's argument borders the frivolous. Despite the general wording in the statement of decision, reading the document as a whole, it is obvious the court made its determination in the context of a marital dissolution proceeding and correctly stated the law as it relates to individuals in a confidential relationship.

party is subject to the standards provided in Section 721 as to all activities that affect the assets or liabilities of the other parties.” (§2102, subd. (b).) While section 2102 does not specifically mention transactions between the parties, a contract disposing of property certainly would qualify as an activity that affects the parties’ assets and liabilities. Accordingly, when Brown and Therrien entered into the further marital settlement agreement, they owed one another “a duty of highest good faith and fair dealing.” (§ 721, subd. (b).) The legal consequence of such a duty is the presumption that one who secures an unfair advantage has done so through undue influence. (*Bonds, supra*, 24 Cal.4th at p. 27.)

2. *The Family Law Court Did Not Err in Finding Therrien Failed To Rebut the Presumption of Undue Influence*

a. *Governing law and standard of review*

“When a presumption of undue influence applies to a transaction, the spouse who was advantaged by the transaction must establish that 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.” (*Burkle, supra*, 139 Cal.App.4th at pp. 738-739.) The advantaged spouse must make this showing by a preponderance of the evidence. (*In re Marriage of Fossum* (2011) 192 Cal.App.4th 336, 344.)

““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.’”” (*In re Marriage of Fossum, supra*, 192 Cal.App.4th at p. 344.) However, “there is a

conceptual and substantive distinction within the substantial evidence analysis depending on who has the burden of proof on a particular issue, which party prevailed on that issue and who appealed.” (*Valero v. Board of Retirement of Tulare County Employees’ Assn.* (2012) 205 Cal.App.4th 960, 965.) When an appellant challenges a finding on appeal as to which he or she bore the burden of proof at trial, the question for the reviewing court is whether the evidence compels a finding in favor of the appellant as a matter of law, not whether there is substantial evidence to support the contrary finding. (*Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership* (2015) 238 Cal.App.4th 370, 390; *Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.) “Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached,” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.”” (*Sonic Manufacturing Technologies, Inc.*, at p. 466.) “The appellate court cannot substitute its factual determinations for those of the trial court; it must view all factual matters most favorably to the prevailing party and in support of the judgment.” (*Dreyer’s Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838.)

b. *The evidence does not compel a finding Therrien rebutted the presumption of undue influence*

The evidence at trial does not compel a finding as a matter of law that Brown signed the further marital settlement agreement “freely and voluntarily . . . with full knowledge of all the facts, and with a complete understanding of the effect of” the agreement. (*Burkle, supra*, 139 Cal.App.4th at pp. 738-739.)

Brown testified that, when he initially contacted Therrien in May 2017 regarding his ownership interest in the Cadwell property, he told her he wanted the property to be given to Shantell. The text messages sent by Brown to Therrien corroborated this testimony. Brown also explained he was emotionally distraught at the time and signed the agreement in a panic. He recounted he had told Therrien of his mental state at the time. Brown repeatedly insisted he did not understand the effect of the document and thought it gave his share of the property to Shantell. Therrien admitted multiple times she understood Brown wanted the property to go to Shantell.

There was testimony that contradicted Brown's account. For example, Therrien testified Brown was acting normally in May 2017, and she initially testified he stated he wanted to give the Cadwell property back to her. However, this evidence was not "uncontradicted and unimpeached." Because the evidence does not compel a finding as a matter of law that Therrien rebutted the presumption of undue influence, the family law court did not err in refusing to enforce the further marital settlement agreement.

Therrien argues Brown's admitted failure to read the agreement before signing it estops him from arguing he did not have a complete understanding of the effect of the document. While it may be true in some circumstances that a party cannot avoid contract obligations by claiming he or she did not read the agreement to which he or she assented, that is not the case here, where the parties had a "duty of the highest good faith and fair dealing." (§ 721, subd. (b).) The evidence before the family law court showed that Therrien was a real estate broker, and Brown testified, "In the past, my ex-wife would drop documents, and I

would just face value sign it based on, I guess, trust, whatever you want to call it.” Brown had communicated his intent to Therrien, and she had agreed to have her attorney draft a document effecting his intent. Therrien facilitated the document’s delivery to Brown’s counsel and followed up with Brown multiple times via text message to ask if his attorney had executed the document. Based on this evidence, it was reasonable for Brown to believe the document Therrien had prepared implemented his stated intent. (See *In re Marriage of Delaney* (2003) 111 Cal.App.4th 991, 1000 [wife failed to rebut presumption of undue influence where husband did not realize effect of documents conveying property to wife, and husband “entrusted all marital financial and legal matters” to wife and signed documents “without questioning [wife’s] instruction that it was necessary to do so”]; *In re Marriage of Grissom* (1994) 30 Cal.App.4th 40, 50 [wife’s failure to read document did not preclude finding it was unenforceable where wife had “pattern of signing financial papers without reading them when requested to do so by” husband].)

DISPOSITION

The judgment is affirmed. Brown is to recover his costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.