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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of EVANGELINE F. and CHRISTIAN J. GARRIS.	B236767
EVANGELINE F. GARRIS, Respondent, v. CHRISTIAN J. GARRIS, Appellant.	(Los Angeles County Super. Ct. No. KD063324)

APPEAL from a judgment of the Superior Court of Los Angeles County. Susan Lopez-Giss, Judge. Affirmed.

Christian J. Garris, in pro. per., for Appellant.

Lawrence M. Gassner for Respondent.

In this marital dissolution action, Christian Garris challenges the trial court's determination of the amount of the equalization payment he owes his former wife, Evangeline Garris.[1] We affirm.

BACKGROUND

Evangeline and Christian married on October 30, 1999, and separated on May 25, 2003. Evangeline filed her petition for dissolution of their marriage on January 12, 2005. The record on appeal does not contain the petition. The issues on appeal relate exclusively to the status of the marital home located in San Marino and the division of the home's value between the parties.

Evangeline and Christian purchased the San Marino home in early 2000, taking title as joint tenants. When they separated, Evangeline moved out, and Christian continued to reside in the home. In 2004, Christian refinanced the mortgage on the home. He asked Evangeline to sign a quitclaim deed as part of that transaction, and she did.

In this dissolution action, Christian moved for summary adjudication of the issue that he "is the sole owner" of the home and that Evangeline "has no claim to, title to, or interest in" the home. Christian argued on several grounds that the presumption of undue influence did not apply to the quitclaim deed, because (1) he did not seek spousal support and (2) he signed a quitclaim deed on a property in Claremont that Evangeline purchased after separation. In opposition, Evangeline submitted a declaration stating that (1) she did not fully understand the implications of the quitclaim deed on the San Marino home when she signed it, and (2) she never discussed or agreed with Christian that she would quitclaim the San Marino home in exchange for his quitclaiming the Claremont home and not seeking spousal support. The trial court denied Christian's motion.

The issues of the status of the marital home and the parties' interests in it were tried to the court on July 28, 2009. Evangeline's testimony at trial largely paralleled the statements in her declaration—her quitclaim deed on the San Marino property was not part of a quid pro quo, she did not mean to give up her interest in the property, and she

[1] We henceforth refer to the parties by their first names because they share a last name. No disrespect is intended.

merely thought the quitclaim deed was a document she needed to sign in order to help Christian refinance the mortgage. The court found her testimony credible and found Christian's version of events not credible. The court also determined that the date of trial (July 28, 2009) would be the valuation date for the property.

After the court determined that Evangeline retained her community interest in the San Marino property, the parties proceeded to litigate the value of the parties' respective interests, including some work that Christian had done on the house, for which he sought reimbursement. On April 19, 2010, after a number of continuances, the court set the hearing on the valuation issues for July 26, 2010. Evangeline was to file her points and authorities and her expert's appraisal report by June 1, and Christian was to file "any opposition" by July 7.

Evangeline's expert did not complete his appraisal report until June 29, 2010. Evangeline's counsel claims to have faxed it to Christian on June 29 and mailed it on June 30, and Christian admitted receiving it in the mail on July 2. According to a declaration by Evangeline's expert, the delay in preparing the report was caused largely by Christian's failure to provide proper documentation concerning the work for which he sought reimbursement. Christian sought to exclude Evangeline's expert's report as untimely.

At the hearing on July 26, 2010, the court denied Christian's request and allowed the expert to testify. At the time of the hearing, Christian had not yet obtained a report from an expert of his own. The court criticized Christian for his failure to retain an expert or otherwise assemble evidence to support his reimbursement claims. The court heard testimony from Evangeline's expert that day, but the court also continued the hearing to September 13 in order to give Christian a further opportunity to retain an expert of his own. The court instructed Christian to "have your expert ready on that date." When Christian asked whether the parties could also "submit additional briefing before that date," the court responded, "If it is based on [certain documents that had been discussed at the hearing], but if you have an expert's report, you must at least –" and Christian interjected, "I will provide that to the other side."

At the continued hearing on September 13, 2010, Evangeline's counsel informed the court that earlier that day he had received from Christian, for the first time, an appraisal report by Christian's expert, a (new) trial brief, and other related documents. He sought to exclude Christian's evidence on the ground that it had not been timely provided. The court reviewed the chronology of the proceedings, which included multiple continuances, and described the July 26 hearing, at which Christian "was not prepared" and at which the court "continued that matter until today's date in order for him to get an appraisal." The court excluded Christian's evidence on the ground that it was untimely because it was not provided to Evangeline at least five court days before the hearing. Christian argued that Evangeline's expert's report was untimely (because it was provided to him later than the date ordered by the court) but was admitted, and he would "like to be afforded the same opportunity." The court rejected his argument on the ground that the situations were not comparable—Christian received Evangeline's expert's report more than three weeks before the July 26 hearing, but Evangeline received Christian's expert's report on the day of the September 13 hearing. The court also declined to grant another continuance.[2]

The court did, however, allow Christian himself to testify concerning his opinion of the value of the property. Christian testified that, as of the valuation date set by the court, the home was worth $935,000 with the improvements for which he sought reimbursement, and $820,000 without those improvements; he sought reimbursement for the full $115,000 difference in value. According to Evangeline's expert, the home was worth $940,000 with the improvements, and he also opined that Christian should be reimbursed for 10 percent of the cost ("total paid bills") of the various putative improvements that Christian had done; according to Evangeline's expert, most of the work was merely maintenance rather than improvements, but some of it did enhance the value of the property "a little bit." Evangeline's expert also testified concerning the fair market rental value of the property during the postseparation period, for which

[2] On appeal, Christian does not challenge the court's refusal to grant another continuance.

Evangeline sought reimbursement to the community (after crediting Christian for continuing to pay the mortgage on the property).

The parties stipulated to the values of various credits to and charges against the value of the property, such as Christian's separate property contribution to the down payment and his postseparation payment of property taxes. On the basis of those stipulations and the evidence presented on disputed issues, the court calculated that Evangeline was entitled to an equalization payment of $310,221.43 from Christian. The court entered judgment accordingly, and Christian timely appealed.

DISCUSSION

Christian argues on two grounds that Evangeline gave up her community interest in the home by signing the quitclaim deed. First, he argues that the quitclaim transaction did not advantage him over Evangeline so the presumption of undue influence does not apply, because in exchange for the quitclaim deed on the San Marino home (1) Christian signed a quitclaim deed on the Claremont home that Evangeline purchased postseparation and (2) he declined to seek spousal support. Evangeline testified, however, that her execution of the quitclaim deed on the San Marino home was not given in exchange for the quitclaim on the Claremont home or for Christian's decision not to seek spousal support. The trial court's determination that the quitclaim transaction advantaged one spouse over the other and that the presumption of undue influence applied was therefore supported by substantial evidence. (See *Marriage of Birnbaum* (1989) 211 Cal.App.3d 1508, 1513 [testimony of a single witness, even if a party to the action, may constitute substantial evidence].)

Second, Christian argues that even if the presumption of undue influence applies, he rebutted it by showing that when Evangeline executed the quitclaim deed on the San Marino home, the transfer "was freely and voluntarily made, and with a full knowledge of all the facts, and with a complete understanding of the effect of the transfer." (*Marriage of Haines* (1995) 33 Cal.App.4th 277, 296.) Evangeline testified, however, that she did not understand that she was giving up her community interest in the property ("[I]t was not my intent to give up my share of the property. . . . [H]e never told

me that I was giving up my share of the property.") That is substantial evidence supporting the trial court's determination that the presumption of undue influence was not rebutted. (*Marriage of Birnbaum*, *supra*, 211 Cal.App.3d at p. 1513.) We must therefore reject Christian's argument.

Christian also argues that the trial court erred by excluding Christian's expert's testimony. But Christian never mentions the trial court's basis for that ruling, namely, that Christian did not provide his expert's report to Evangeline's counsel until the day of the September 13 hearing. Because Christian never identifies the objection that the trial court sustained, he likewise fails to show that the trial court's ruling constituted an abuse of discretion. (See *Zhou v. Unisource Worldwide, Inc.* (2007) 157, Cal.App.4th 1471, 1476 [rulings on the admission or exclusion of evidence are reviewed for abuse of discretion].) We must therefore reject this argument as well.

Finally, Christian argues that the trial court's calculation of the amount of the equalization payment was erroneous. But with one exception, Christian fails to identify any specific error made by the trial court—he merely presents his own calculations without explaining where they differ from the trial court's or arguing why the trial court's approach was wrong.

The one exception concerns the rental value of the property. Christian states that Evangeline's expert "did not provide a single comparable property for the rental values that he offered at trial." Christian's citation to the record, however, does not support that assertion, so we need not consider it. (See Cal. Rules of Court, rule 8.204(a)(1)(C)); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 & fn. 16.) Moreover, Christian never mentions, let alone criticizes, the testimony of Evangeline's expert concerning the sources and methods he used to determine the property's rental value. Christian therefore has not shown that the trial court's determination of rental value was not supported by substantial evidence, namely, by Evangeline's expert's testimony.

On the basis of his unsupported assertion about the basis for Evangeline's expert's opinion on rental value, Christian argues, as he did in the trial court, that "the reasonable rental rate and the mortgage were equivalent so that there should be no reimbursement

owed by [Christian] to the community." But according to Evangeline, the mortgage payment fluctuated considerably during the postseparation period, and her calculations took those fluctuations into account. In his argument on appeal, Christian never acknowledges this point, let alone rebuts Evangeline's claims about the mortgage payment fluctuations.

Apart from the issue of reimbursement for rental value, Christian does not identify the particular respects in which he believes the trial court's calculations were erroneous. Moreover, we note that the calculations that Christian advocates on appeal differ radically from the calculations he advocated in the trial court. In his trial brief for the September 13 hearing, Christian proposed calculations that resulted in an equalization payment to Evangeline of $55,432.74. The calculations presented in his opening brief on appeal would result in an equalization payment of $212,707.01. Christian never acknowledges this discrepancy, never identifies where the differences lie, and never explains why he should be permitted to advocate on appeal a position that he did not advance in the trial court.

For all of the foregoing reasons, we affirm the judgment.

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.