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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of RENEE S.T. and DWAYNE JONES.	B234759
DWAYNE JONES, Appellant, v. RENEE S.T. JONES, Respondent.	(Los Angeles County Super. Ct. No. MD039539)

APPEAL from a judgment of the Superior Court of Los Angeles County, Denise McLaughlin-Bennett, Judge. Affirmed.

Dwayne Jones, in pro. per., for Appellant.

Renee S.T. Jones, in pro. per., for Respondent.

INTRODUCTION

Appellant Dwayne Jones challenges a judgment of dissolution of marriage, insofar as the trial court ordered Dwayne to reimburse his wife Renee S.T. Jones for a $10,000 loan and denied his request for half of the proceeds of the sale of a piece of property owned by Renee.[1] We affirm.

PROCEDURAL BACKGROUND

Dwayne and Renee were married on July 18, 2007 and separated in September 2008. Renee initiated the underlying dissolution action on January 6, 2011. In granting the judgment of dissolution, the court ordered Dwayne to reimburse Renee for $10,000 she allegedly loaned him to start a trucking business. The court also denied Dwayne's request to be awarded 50 percent of the $78,000 in proceeds Renee realized from the sale during their marriage of a piece of property she owned (the San Bernardino property). Dwayne has timely appealed from the judgment.

DISCUSSION

I. *Standard of Review*

"Where, as here, no statement of decision was requested, all intendments will favor the trial court's ruling" and appeals are limited to errors shown by the record. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 649; *In re Marriage of Hall* (2000) 81 Cal.App.4th 313, 316.) We search the record only to determine whether the judgment is supported by substantial evidence, viewed in the light most favorable to the prevailing party and giving that party the benefit of every

[1] Since the two spouses share a last name and appellant was respondent below, we shall refer to the parties to the dissolution action by their first names, to avoid confusion.

reasonable inference. (*In re Marriage of Okum* (1987) 195 Cal.App.3d 176, 181-182.) In particular, "'[a]ppellate review of a trial court's finding that a particular item is separate or community property is limited to a determination of whether any substantial evidence supports the finding.'" (*In re Marriage of Rossin* (2009) 172 Cal.App.4th 725, 734.)

II. *Renee's $10,000 Loan to Dwayne*

Dwayne contends that the trial court erred in ordering him to reimburse Renee for $10,000 based on the court's finding that she had loaned him this amount. We find no error.

At trial Renee testified that she loaned Dwayne $10,000 in 2007 to start a trucking business. She testified that she signed and dated a check from her account, filled in the amount of $10,000, and wrote "Loan Dwayne Jones," in the memorandum line. Leaving the payee name blank, she gave the check to Dwayne on November 30, 2007. The returned check, admitted into evidence at trial, bears the name "RawHide Trucking LLC/Vaughn Hankins" written on the payee line in handwriting that Renee did not recognize. Someone other than Renee also wrote "trailer investment" beneath the memorandum line. Renee testified that she had met Mr. Hankins on one occasion, when he and Dwayne were talking about starting the trucking business.

Dwayne denied receiving the check, and denied that he needed money to start up his trucking business. He said he had no affiliation with Mr. Hankins and did not know who he was.

Dwayne argues on appeal that the trial court should not have ordered him to pay Renee $10,000 because he never received a $10,000 check from Renee and has no relationship or affiliation with Vaughn Hankins, the person who cashed the check. However, it is the province of the trial court to assess the credibility of

witnesses and resolve conflicts in evidence. (*In re Marriage of Frick* (1986) 181 Cal.App.3d 997, 1016.) Here, the trial court found Renee's testimony that she loaned Dwayne $10,000 to be credible, and we will not upset the court's determination. (*Id.* at p. 1014 [affirming trial court's order that husband repay wife after she gave him two checks for $5,000 with the word "loan" written on top of the checks; evidence demonstrated the checks were not intended to be a gift].)

Dwayne also argues that any agreement by Dwayne to repay Renee $10,000 was required to be in writing. However, the statute of frauds requires that agreements to loan only an amount greater than $100,000 be in writing, and the provision pertains only to loans by a person "engaged in the business of lending or arranging for the lending of money or extending credit." (Civ. Code, § 1624, subd. (a)(7).) Thus, no written contract was required in this case.

In sum, we conclude that the trial court did not err in ordering Dwayne to repay Renee for the $10,000 loan she made to him. (See *In re Marriage of Saslow* (1985) 40 Cal.3d 848, 866 [remanding to trial court issue whether wife had loaned husband $3,000 from her separate property such that she was entitled to reimbursement]; *In re Marriage of Campbell* (1999) 74 Cal.App.4th 1058, 1061, 1065 [affirming order that husband reimburse wife for loan from separate property to aid husband's business, and refusing to consider payments as extrinsic evidence that home was transmuted to community property].)

III. *Dwayne's Interest in Proceeds from Sale of the San Bernardino Property*

While Dwayne and Renee were married, Renee received $78,000 in proceeds from the sale of the San Bernardino property which she had purchased prior to the marriage. Dwayne conceded at trial that he was not on the title to the San Bernardino property and had no ownership interest in the property. However, because the sale of the property was completed while they were married, he

contends that the profits from the sale should be characterized as community property and thus the court should have awarded him 50 percent of the proceeds.

Separate property includes property owned before marriage, and the "rents, issues, and profits" of such property. (Fam. Code, § 770, subds. (a)(1), (3).) The proceeds from the sale of separate property are thus considered separate property. (*Hicks v. Hicks* (1962) 211 Cal.App.2d 144, 153.)

Because Dwayne disclaimed any ownership interest in the San Bernardino property purchased by Renee before their marriage, the trial court properly characterized it as the separate property of Renee. Moreover, the $78,000 in proceeds of the sale of the property remained her separate property.

Nevertheless, Dwayne contends that he is owed half of the proceeds because he made a $3,000 loan to Renee to help her close escrow on the sale of the San Bernardino property, and without this assistance, she would not have been able to sell it. This argument is not well-taken.

Based on the evidence presented, the trial court found that Renee paid Dwayne back for the $3,000 loan. Renee introduced into evidence a canceled check from her account dated November 6, 2007 in the amount of $6,200, made out to Dwayne, with the words "Loan payoff" written in the memorandum line. Dwayne acknowledged endorsing the check but did not remember that this check was the reimbursement for the $3,000 loan. He did, however, remember that Renee repaid him the $3,000 sometime in November 2007. Thus, it was undisputed at trial that Renee paid Dwayne back for the $3,000 loan. Having concluded that Renee paid back Dwayne in full, the trial court properly concluded that Dwayne was not entitled to any further payments or interest in the proceeds of the sale of the San Bernardino property.

Dwayne's alternative theory of recovery is that when Renee used some of the proceeds from the sale of the San Bernardino property to improve Dwayne's

home in which she lived with him, she "commingled" her separate property with his and thus "transmuted" all the proceeds into a community asset. Dwayne's theory in invalid.

"Both before and during marriage, spouses may agree to change the status of any or all of their property through a property transmutation. ([Fam. Code,] § 850.) A transmutation is an interspousal transaction or agreement that works a change in the character of the property. [Citation.] In order for a transmutation of property to occur, statutory formalities must be met. For example, [Family Code] section 852, subdivision (a) provides: 'A transmutation of real or personal property is not valid unless made in *writing* by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.' (Italics added.)" (*In re Marriage of Campbell, supra*, 74 Cal.App.4th at p. 1062.)

In this case, Renee executed no such written declaration indicating her intention to change her separate property into community property. "Because an agreement is required to transmute the character of property, the use of separate property during marriage—without more—does not convert it into community property." (*In re Marriage of Rossin, supra*, 172 Cal.App.4th at p. 734.) Thus, no transmutation can be found to have occurred in this case.

Moreover, the "commingling" theory does not aid Dwayne here. Had Renee sought reimbursement for her contributions from her separate property to improvements of the couple's shared home, Dwayne could have attempted to rely on the argument that her separate property was so commingled with the community property as to make it impossible to trace and extract from the community. (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 822.) Renee, however, made no such claim, and Dwayne has no reasonable argument under the

law that he is entitled to half of the $78,000 in proceeds merely because Renee chose to spend some of those proceeds on their shared home.

DISPOSITION

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

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.