

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DACM PROJECT
MANAGEMENT, INC., et al.,

Plaintiffs and Respondents,

v.

SHERRY HACKNEY CADE,

Defendant and Appellant.

B265906

(Los Angeles County
Super.Ct.No. BC518954)

Appeal from the judgment of the Superior Court of
Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Paul Kujawsky for Defendant and Appellant Sherry
Hackney Cade.

Law Office of Richard A. Grossman, Richard A. Grossman;
Grossman & Mahan, and Leslie K. Grossman for Plaintiff and
Respondent DACM Project Management, Inc.

A. Alan Cade, in pro. per., for Defendant and Respondent
Arthur Alan Cade.

Appellant Sherry Hackney Cade (Sherry) appeals from a judgment in favor of respondent DACM Project Management, Inc. (DACM) in DACM's action against Sherry and her husband, respondent Arthur Alan Cade (Alan),¹ to set aside as fraudulent Alan's execution of an interspousal grant deed transferring to Sherry his community interest in the parties' family residence.² We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1999, Alan and Sherry married. In 2006, they purchased a residence (the La Canada property), title to which was taken in both of their names "as Community Property with Right of Survivorship." Alan and Sherry eventually separated on January 8, 2013.

Between 2006 and 2012, Alan misappropriated the sum of \$505,000 from DACM, where he had been employed since 1987. He had used a substantial amount of those funds to make improvements to and payments on the La Canada property. In early 2013, DACM's President and Chief Executive Officer terminated Alan's employment "due to theft."

¹ At the time of trial, Sherry Cade and Alan Cade were husband and wife in the process of divorcing. We refer to them by their first names for convenience and ease of reference. We intend no disrespect.

² Although the challenged judgment was made against both Sherry and Alan, only Sherry appeals. In his respondent's brief, Alan states that he is joining in DACM's brief and "adopts the same in full, by this reference thereto as if fully set forth herein."

Alan ultimately agreed to submit to a judgment by confession in favor of DACM. On February 1, 2013, Alan signed a confession of judgment in the sum of \$430,000, the amount originally thought to be owing. Alan's attorney, Stephen J. Chazen, signed the requisite declaration in support of Alan's confession of judgment t, also dated February 1. That same day, however, DACM learned about an additional \$75,000 which Alan had misappropriated, bringing the total theft to \$505,000, and the confession of judgment signed on February 1 was not filed. On February 6, Alan signed a second confession of judgment in the revised amount, which was filed that day in Los Angeles Superior Court case No. ES016388 entitled DACM v. Arthur Alan Cade (the Burbank case).³ Judgment was entered the same day in the total sum of \$505,030.⁴

³ The record on appeal contains a copy of the attorney certification signed on February 1, 2013. This document does not reflect the amount of the judgment, only that the attorney had advised Alan with respect to his rights. As discussed below, Sherry's position on appeal is that the attorney certification signed on February 1 was intended to refer only to the unfiled confession of judgment signed on February 1, and not to the one signed February 6 which *was* filed. The record reflects no other attorney certification.

⁴ As discussed later in this opinion, on May 23, 2014, the court in the Burbank case held a hearing on Sherry's motion to set aside the February 6, 2013 judgment as void. The court denied the motion for lack of standing and also ruled that the judgment was not void on its face.

Even before Alan executed the first confession of judgment, he and Sherry began “scheming” how to avoid paying the DACM judgment. They decided on getting divorced and transferring the property to Sherry in the divorce proceedings.

On February 20, 2013, Alan filed a petition to dissolve the parties’ marriage. On March 21, Alan and Sherry executed an interspousal transfer grant deed transferring the property to Sherry. She recorded the deed on May 31.

On August 20, 2013, DACM filed a complaint against Alan and Sherry, seeking \$505,030, a declaration that the interspousal transfer grant deed was fraudulent, attorney’s fees and costs, and related relief. Sherry and Alan each filed an answer, although Alan raised no affirmative defenses.

Trial in DACM’s fraudulent transfer action commenced on February 23, 2015, and lasted three days. At trial, Sherry relied on two orders made in the family law dissolution action, the first on March 21, 2013, awarding her “sole use and possession” of the La Canada property, and the second on July 23, upholding the interspousal transfer against Alan’s challenge that the deed was executed under duress. Sherry asked the court to take judicial notice of the orders, contending that they justified the interspousal transfer. The court denied the request and further explained that, in any case, the second order specifically noted that the ruling was not intended to extend to third party claims regarding ownership issues, such as DACM’s claim that the transfer was fraudulent as to creditors.

At the conclusion of trial, the court ruled in favor of DACM, and on June 5, 2015, filed its statement of decision and judgment.

Sherry filed a motion for new trial or, in the alternative, to set aside the judgment. The court denied the motion and also denied Sherry's ex parte application to renew her motion.

Sherry timely filed her notice of appeal.⁵

DISCUSSION

The focus of Sherry's challenge to the fraudulent transfer judgment in favor of DACM is twofold. First, she contends that the confession of judgment is void and that without it DACM cannot prosecute its fraudulent transfer claim. Second, she contends that the trial court should have given preclusive effect to the family law court order validating the interspousal transfer preclusive effect. Neither contention has merit.

A. Alan's Confession of Judgment.

As previously indicated, on February 6, 2013, Alan signed and filed a confession of judgment for \$505,000, and judgment was entered in DACM's favor in the total sum of \$505,030. More than a year later, Sherry filed a motion to set aside the judgment as void. Because Sherry was not a party to that action between DACM and Alan, the court denied the motion for lack of standing and, at the same time, ruled that the judgment was not void.

⁵ Although Sherry asserts in her brief that the denial of her new trial motion is reviewable on appeal from the underlying judgment, she does not challenge the denial of her motion. We note that Sherry did not raise in her new trial motion either of the two issues she raises on appeal.

Sherry did not appeal the denial of her motion, nor did she raise the issue in DACM's fraudulent transfer action.

Nonetheless, Sherry now contends that the confession of judgment signed by Alan and filed in the Burbank case is void because the record does not reflect a valid attorney certificate, as required by Code of Civil Procedure, section 1132, subdivision (b).⁶ Thus, she argues that because DACM's fraudulent transfer judgment depends on Alan's confession of judgment, "[w]ithout it, DACM has no judgment, and no standing to prosecute a claim for fraudulent transfer." She also contends that the refusal of the court in the Burbank case to allow her to challenge the judgment's validity constitutes a denial of due process.

Any question as to the propriety of the confession of judgment is not cognizable in this appeal. Sherry not only failed to raise the issue in the fraudulent transfer action, but also, when she did raise it in the Burbank case, her motion to set aside the judgment was denied for lack of standing. The time within which to challenge that ruling has long expired. (Cal. Rules of Court, rule 8.104.) Thus, regardless of whether a valid attorney certificate was filed in support of the confession of judgment filed on February 6, 2013, Sherry cannot be heard to complain.

⁶ Code of Civil Procedure section 1132, subdivision (b) requires that an independent attorney sign a certificate stating that he or she has examined the proposed judgment and has advised the debtor as to the waiver of rights and defenses involved in using this procedure. Without the certificate, the confession of judgment is invalid. (*Efstratis v. First Northern Bank* (1997) 59 Cal.App.4th 667, 673-674.)

B. The Interspousal Transfer Grant Deed

At a July 23, 2013 hearing in the parties' marital dissolution proceeding, the family law court made the following statement with regard to the interspousal transfer grant deed by which Alan transferred to Sherry his community interest in the La Canada property:

"Under [section] 852[, subdivision](b) of the Family Code a recorded interspousal transfer is a document that shows the intent and concurrence of the other party to transfer interspousal what might otherwise be community property into separate property. And I'm going to not declare void that interspousal transfer. It is effective in this court's mind to have effected [a Family Code section 852, subdivision (b)] transfer of that property from either [Alan] or from [the] community estate to [Sherry] as separate property."

The court later explained, with respect to Alan's position that he had signed the deed under duress: "I'm certain that [Alan's concerns regarding the execution of the transfer deed] are going to come up in the action, the civil action that may or may not be filed by the party who has sought to join herself into this action—it's not going to be allowed to join—concerning who owns what properties.

"The court makes no—I'm not going to make any ruling on what the effect is as to third parties as to whether they have standing to raise issues of ownership or liens against [Sherry] or otherwise here. That's not before the court. *I'm simply noting that there is an interspousal transfer, a grant deed that was recorded, and what the effect is under Family Code [section] 852.* I'm not going to set it aside because I do not find that [Sherry] had you under duress or that [Sherry] influenced you unduly in

doing anything with respect to signing the transfer.” (Italics added.)

Sherry asked the court in the fraudulent transfer action to take judicial notice of the family law court’s order. The court denied the request, finding that the order was not relevant to the issues before it. Viewing the family law court order as an award to her of the family residence, Sherry now maintains that the court in the fraudulent transfer action erred in not taking judicial notice of the order and in not giving it preclusive effect. We disagree.

The court correctly found that the order was not relevant to the matter before it. Indeed, as indicated above, the family law court found only that the interspousal transfer grant deed was valid as between Alan and Sherry; it made no ruling which would have any bearing on DACM’s fraudulent transfer case.

In any event, Sherry is mistaken in her contention that had the court taken judicial notice, it would have been obliged to give the order preclusive effect. “[I]ssue preclusion applies: (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825.)

Sherry contends that the issue in the family law matter was identical to the issue in the instant case. Not so. As indicated above, the issue before the family law court was whether the interspousal transfer was valid as between Sherry and Alan. The court expressly stated that it was not making “any ruling on what the effect is as to third parties as to whether

they have standing to raise issues of ownership or liens against [Sherry] or otherwise here.”

DISPOSITION

The judgment in favor of DACM is affirmed. DACM is entitled to costs on appeal.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.