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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

FELICIA YAA NNURO,

Respondent,

v.

AUGUSTINE K. NNURO

Appellant.

B294802

(Los Angeles County
Super. Ct. No. PD063997)

APPEAL from an order of the Superior Court of Los Angeles County, Jonathan L. Rosenbloom, Judge. Affirmed. Stolar & Associates and Steven R. Stolar for Appellant. Mulvihill Law and Margaret D. Mulvihill for Respondent.

This divorce case is about a husband who hid a \$230,000 asset from his wife during their divorce, got caught, got punished, and now complains. We affirm.

Husband and wife were married over 35 years. Husband worked for the City of Los Angeles for 29 years. This employment yielded two separate retirement plans: his “LACERS” plan and his Empower Deferred Compensation Plan. The LACERS plan was worth \$230,697.71. The Empower plan was worth \$309,621.37. Their values were, in other words, roughly in the same ballpark. Yet husband revealed only the Empower plan to his wife and to the court during the process of divorce. The two entered a final stipulated judgment filed with the court on March 5, 2018. This judgment named only the Empower account for husband, and listed its value as \$309,621.37.

Wife later discovered the LACERS plan and on July 31, 2018 asked the court to award all of it to her under subdivision (h) of Family Code section 1101. The court found husband deliberately failed to disclose the LACERS plan. The court awarded it all to wife. Husband moved for reconsideration of this ruling, which the court denied.

Wife incorrectly argues husband’s appeal was not timely. Husband filed his motion for reconsideration within ten days of the entry of the Order After Hearing awarding wife the entirety of the LACERS plan. (Code Civ. Proc., §1008, subd. (a).) Husband’s motion for reconsideration contained an affidavit explaining his earlier request, the trial court’s order, and the allegedly new or different facts or circumstances he believed warranted reconsideration. (Code Civ. Proc., §1008, subd. (a); *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048.) The trial court denied husband’s

motion to reconsider on the merits, but the motion itself was procedurally proper. Accordingly, husband gained time to appeal. (Cal. Rules of Court, rule 8.108(e)(1).) He filed his appeal before the deadline. Husband's appeal was timely.

The questions presented are whether substantial evidence supports the trial court's findings and whether the trial court's finding that husband deliberately omitted the LACERS account amounts to a finding of fraud, malice, or oppression under Civil Code section 3294. Husband agrees our standard of review is whether substantial evidence supported the court's order. When we review for substantial evidence, we accept all evidence supporting the trial court's order. We disregard contrary evidence. (*Harley-Davidson, Inc. v. Franchise Tax Bd.* (2015) 237 Cal.App.4th 193, 213–214.) We draw reasonable inferences to affirm the trial court. We do not reweigh the evidence. (*Ibid.*) We inquire whether the record contains substantial evidence to support a determination by clear and convincing evidence, for that is the standard in Civil Code section 3294. (*Marriage of Rossi* (2001) 90 Cal App.4th 34, 40 (*Rossi*).) When conflicting inferences may be drawn from undisputed facts, we accept the reasonable inferences drawn by the trier of fact. (*Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 913.)

The family court listened to husband at length. He argued his omission was inadvertent because he believed both accounts were really the one Empower account, which he believed he had disclosed fully. The trial court determined by clear and convincing evidence husband deliberately hid the LACERS account from his wife. This determination was a credibility call. We defer. (Cf. *Rossi, supra*, 90 Cal.App.4th at pp. 41–42 [“The problem with [this] argument is that the court expressly found

[that] evidence was not credible. The record supports this finding.”].)

Further substantial evidence springs from husband’s evasive conduct. At the hearing, the family court repeatedly quizzed husband on *why* he did not disclose the LACERS account. The court tried three times and finally gave up when husband never gave a straight answer. Husband’s appellate counsel writes with admirable candor that husband’s “explanation for the omission at the hearing on October 11, 2018 was admittedly less than satisfactory.”

Further substantial evidence is the fact husband, with the assistance of counsel, prepared and signed the Preliminary Declaration of Disclosure under penalty of perjury affirming the declaration was true and correct. This declaration omitted the LACERS account.

Further substantial evidence is the size of the omitted account. The family court astutely told husband “it is just too large to have slipped your mind or your attorney’s mind.”

Further substantial evidence is the lengthy time over which husband had accumulated this account and the fact his paystubs showed deductions taken for contributions to two separate accounts.

Further substantial evidence is the nature of husband’s employment. He is an engineer. He is intelligent and presumably familiar with quantitative information. These inferences cut against an innocent but sizable quantitative omission.

Husband also attacks the family court for failing expressly to state it was finding the husband acted with fraud, malice, or oppression. We presume findings in favor of the ruling under

review. (*Rossi, supra*, 90 Cal.App.4th at 40.) The court in effect found fraud by finding, by clear and convincing evidence, that husband deliberately concealed his large retirement account from his wife. This is the most reasonable interpretation of the court's ruling.

Deliberate concealment of a material fact is fraud. (Civil Code § 3294, subd. (c)(3); *Rossi, supra*, 90 Cal.App.4th at 41[“The record supports the family court's conclusion that [wife] intentionally concealed the lottery winnings and that they were community property.”].) The court was not required to adorn its factual finding.

Husband bemoans the harshness of forfeiture. This rule is simple and strong. It creates a predictable and powerful incentive: be honest. Be sneaky at your own peril. (See *Rossi, supra*, 90 Cal.App.4th at pp. 42 & 43.)

The court properly refused to reconsider the matter later when it became clear husband was offering no newly changed fact or law in his motion for reconsideration.

DISPOSITION

The order is affirmed. Costs to Felicia Nnuro.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.