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May 19, 2020

Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
Room 1295
San Francisco, CA 94102-4797

Re: Request for Depublication

Safarian v. Govgassian
--- Cal.Rptr.3d ---- (2020 WL 1921791)
Opinion Filed 4/21/20
Second Appellate District No. B291387
Los Angeles County Super. Ct. No. BC387615

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The Association of Certified Family Law Specialists (ACFLS) requests depublication of the opinion filed April 21, 2020 in the above matter (the "Opinion") per rule 8.1125 of the California Rules of Court.

Reason for Depublication

The Opinion does not meet the publication standards in rule 8.1105 because it uses the wrong test in analyzing whether a marital settlement agreement is valid. In applying a more stringent standard than the law the requires, the Opinion can mislead the bench and bar.

The dispute in *Safarian* involved a claim by spouses against several defendants for fraud. While the fraud action was pending, the husband filed for divorce. The spouses entered into a written marital settlement agreement (MSA) purporting to divide their community interest in any proceeds resulting from their fraud claim as the equal, separate property of each spouse. A civil judgment was entered for the spouses against the defendants on the fraud claim.

Before collecting on the civil judgment, the husband went bankrupt. The judgment debtors knew of the MSA and settled with the bankruptcy trustee. The wife was not a party to the bankruptcy proceeding and did not consent to the settlement by the trustee.

The judgment debtors claimed that the agreement with the bankruptcy trustee included the wife's interest in the judgment, arguing that the MSA was not a transmutation of the community interest in the civil judgment under section 852.[1] The wife disagreed. She claimed that the bankruptcy settlement resolved only her husband's claims, not her separate property interest in the judgment created by the MSA.

The trial court found for the debtors, ruling that the MSA was not a transmutation of the community interest in the civil judgment. Because the trial court believed the spouses had not divided their community interest in the civil judgment, it concluded that the husband's bankruptcy trustee had the authority to settle the entire community interest with the judgment debtors. (See § 1100, subd. (a) [each spouse has equal management and control over community personal property, including absolute power of disposition].) [2] The wife appealed.

In assessing whether the MSA validly divided the community interest in the civil judgment, the Court of Appeal applied the rule for transmutations

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[1] Family Code section 852 provides, in part: "(a) 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. (b) A transmutation of real property is not effective as to third parties without notice thereof unless recorded."

[2] Undesignated statutory references are to the Family Code.

in section 852. (Opinion, p. 3.) The Court of Appeal held that the MSA was voidable because it failed to meet the requirements of section 852. (*Ibid.*)

That was the wrong test. The statute applicable to marital settlement agreements (§ 2550) should have been used to determine the validity or meaning of the MSA.[3]

An agreement transmuting community to separate property requires an "express declaration" in writing; a stringent requirement not met by oral agreement, inferences, parol evidence, or exceptions to the statute of frauds. (§ 852, subd. (a); *Estate of MacDonald* (1990) 51 Cal.3d 262, 267-271.) Marital settlement agreements, however, may take the form of a "written agreement of the parties, *or on oral stipulation* of the parties in open court…." (§ 2550.)

Both statutes cannot apply because section 852 requires an express written declaration, which contradicts section 2550 that allows for oral settlements on the record. Section 2550 controls because it specifically deals with marital settlement agreements, while section 852 generally applies to agreements between spouses to change the character of their property. (See Code Civ. Proc., § 1859 [statute having particular application "will control a general one that is inconsistent with it"].)

When a marital dissolution action has been commenced, the family court must divide the community estate equally, unless the spouses elect a different division in a written settlement agreement or by oral stipulation in open court. (§ 2550.) The family court has jurisdiction to approve a settlement agreement under section 2550. (*In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 202–203 (*Dellaria*).) The purpose of section 2550 is " 'to prevent overreaching by one of the parties and to ensure that the rights of a party are not dependent on faulty recollection or false testimony.' [Citation.]" (*Ibid.*) Marital settlement agreements are favored, as explained by *In re Marriage of Egedi* (2001) 88 Cal.App.4th 17, 22 (*Egedi*):

> 'Property settlement agreements occupy a favored position in the law of this state….' (*Adams v. Adams*

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[3] Section 2550 provides: "Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall … divide the community estate of the parties equally."

> (1947) 29 Cal.2d 621, 624, 177 P.2d 265.) Courts are reluctant to disturb them 'except for equitable considerations. A property settlement agreement, therefore, that is not tainted by fraud or compulsion or is not in violation of the confidential relationship of the parties is valid and binding on the court. [Citations.]' (*Ibid.*)

(*Egedi, supra,* 88 Cal.App.4th at p. 22.)

The requirements for making a marital settlement agreement in section 2550 may not be contradicted by rule of court. (*In re Marriage of Woolsey* (2013) 220 Cal.App.4th 881, 897 (*Woolsey*) [invalidating local rule that required notarization of agreement with unrepresented party].) As explained in *Woolsey:*

> The Legislature has imposed specific requirements for settlement agreements and provided an expedient method of enforcing them. There is nothing in the Evidence Code or Family Code or in the Code of Civil Procedure that requires a marital settlement agreement to be notarized or contain talismanic language to inform unrepresented parties about the right to legal counsel. [Citations.] Thus, the addition of requirements to those imposed by the California codes for mediated marital agreements is inconsistent with the Legislature's specifications of the requirements for enforceability.

(*Woolsey, supra,* 220 Cal.App.4th at p. 897.)

The Court of Appeal in *Safarian* should not have applied the test for transmutations to the MSA. The "express declaration" requirement in section 852 is not found in section 2550. Per *Woolsey,* a marital settlement agreement is valid if it meets the standard in section 2550 and no other requirements may be added.

By applying the unforgiving test in section 852, the Opinion holds the MSA was voidable at the election of either spouse. (Opinion, pp. 13-17.)

Because the Court of Appeal held that the MSA was not an "express declaration" under section 852, no evidence could be presented to explain or supplement the agreement to determine if the spouses intended to divide their community interest in the civil judgment into separate property shares. (*Ibid.*) That was error because section 2550 does not require an express declaration for spouses to agree on a division of community property.

Had the test in section 2550 been used, the law of contracts would have permitted the family court to interpret the written settlement agreement and resolve any ambiguity regarding the MSA. (*In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439–1440.) The matter should have been remanded to the family court to make that interpretation under section 2550.

The Opinion ultimately holds that the judgment debtors had no standing to challenge the validity of the MSA under section 852, so they could not seek to invalidate it. (Opinion, pp. 17-25.) Although the judgment debtors lost on appeal, the analysis was wrong. No mention is made of section 2550 or whether a third party has standing to challenge a marital settlement agreement under that statute. The Opinion, if left published, could be precedent to interpret marital settlement agreements strictly under 852, rather than under section 2550. That would contravene the favored status of these agreements and ignore section 2550.

Statement of Interest

ACFLS is the Association of Certified Family Law Specialists (acfls.org), an independent nonprofit bar association, composed of approximately 728 California certified family law specialists, and dedicated to promoting and preserving the practice of family law since 1980.

ACFLS received no compensation for its position, has no financial interest in this matter, and does not represent either party. (Amicus committee member Claudia Ribet was involved in the appeal so she was recused from participation in ACFLS's deliberations and voting.)

Timeliness

The Opinion was filed April 21, 2020. A request for depublication is due within 30 days after the decision is final in the Court of Appeal. (Rule 8.1125(a)(4).)

Conclusion

ACFLS respectfully requests depublication of the Opinion.

ASSOCIATION OF CERTIFIED
FAMILY LAW SPECIALISTS (ACFLS)

By: /s/

Christopher C. Melcher
Coordinating Director and
Amicus Committee Member

PROOF OF SERVICE

State of California)
County of Los Angeles)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 5941 Variel Avenue, Woodland Hills, California 91367.

On May 20, 2020, I served the foregoing document described as **REQUEST FOR DEPUBLICATION** upon the following by placing a true copy thereof in sealed envelopes addressed as follows:

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Executed on **May 20, 2020** at Woodland Hills, California.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

/s/
Sydney Cheek