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Roger Bernhardt

Golden Gate University School of Law, rbernhardt@ggu.edu

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The undue influence presumption vs the record title presumption:
Marriage of Delaney, 2003
Roger Bernhardt

When interspousal transaction is to one spouse's advantage, Fam C §721 presumption that transaction was result of undue influence trumps Evid C §622's record title presumption.
Marriage of Delaney (2003) 111 CA4th 991, 4 CR3d 378

Husband, who owned real property, married Wife in 1995. Wife had worked in law offices as a secretary and legal assistant specializing in probate work. In a prior dissolution, Wife had been awarded a one-half community interest in real property as a result of a joint interest in property she had earlier obtained from her former spouse in connection with a loan on that property. Husband had a learning disability that severely limited his reading comprehension, and he relied on Wife to handle his legal and financial matters. In 1996, in connection with the application for a remodeling loan, Husband executed a grant deed conveying his (separate) property to Wife and Husband as joint tenants. The parties separated in 1999.

In dissolution proceedings, the trial court determined that Wife had not given sufficient consideration to Husband for the transfer of his property to joint tenancy; as a fiduciary, Wife bore the burden of establishing that the joint tenancy grant deed was not the product of undue influence. Wife failed to sustain the burden, and the grant deed was held void. The trial court ordered the grant deed set aside and ordered Wife to quitclaim the property to Husband.

The court of appeal affirmed, finding that, under Fam C §721, the trial court properly applied the presumption of undue influence that arises from the statutory fiduciary relationship between spouses. The court rejected Wife's argument that Husband should have been required to rebut by clear and convincing evidence the presumption under Evid C §662 that the property was held in joint tenancy because that was the manner in which record title was held. Noting that the case concerned a conflict between those presumptions, the court explained that the case was controlled by *Marriage of Haines* (1995) 33 CA4th 277, 39 CR2d 673, in which the court of appeal specifically addressed the direct conflict between the Evid C §622 presumption favoring stability of title and the Fam C §721 presumption of undue influence arising when one spouse obtains an advantage over the other in an interspousal property transaction. The *Haines* court concluded that in every such instance, the presumption based on the confidential fiduciary relationship between spouses must prevail over the presumption based on record title.

The court also determined that the Fam C §2581 presumption that property acquired as joint tenancy by a married couple is community property did not apply. The court observed that §2581 by its terms applies to property "acquired by the parties during marriage in joint form" and stated that the *acquisition* of property during marriage by purchase or gift is clearly different from an interspousal transmutation of property *already* owned by one or both spouses.

The court concluded that substantial evidence in the record supported the trial court's conclusion that Wife failed to bear her burden of establishing that Husband's transmutation of the property to joint tenancy was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of the effect of a transfer from his unencumbered separate property interest to a joint interest.

THE EDITOR'S TAKE: When you have several inconsistent statutory presumptions, all dealing with the same matter, there ought to be some mechanism for choosing between them; otherwise every situation is subject to numerous unpredictable outcomes. It would be nice if legislators—when they enact a presumption that conflicts with others they have already enacted—would also tell us how to reconcile the conflicts. But since that rarely happens, it will fall upon judges to do the reconciling for them. In this case, the judicial ranking system does make good sense, but we would still be better off if the statutes themselves were written more clearly.

The Evidence Code has a presumption that title is what it says it is. This is common sense, of course, and very useful to a third party examining the records when dealing with an owner who is married (*e.g.*, a spouse's name not on record title can be ignored). However, it makes little sense to apply this presumption to internal transactions between married partners. If I were rewriting the Evidence Code, I would make it conclusive as to bona fide purchasers and inapplicable to actions between spouses.

The Family Code presumption that all joint property is really community property, by its own language applies only to dissolution actions, so third parties need never worry about it. It is not surprising, therefore, that it should trump the Evidence Code presumption, as the cases hold. But the statute is not that clear as to just what a deed has to say to get itself out of the presumption: Since the explicit statement in a deed "to A and B as joint tenants" means that they own as community property rather than as joint tenants, just how much more must the "clear statement in the deed" add to change that result? Will saying "in joint tenancy and not as community property" be enough? Must the deed also say "as separate property," as the statute seems to mandate?

The presumption of Fam C §721 is the most inarticulate of all, because there is no presumption of undue influence mentioned in the code section itself. It has to be inferred from the statute, and it requires several steps of reasoning to go from a statutory "duty of highest good faith and fair dealing" toward the other spouse to get to the judicial conclusion that "whenever spouses enter into an agreement in which one party gains an advantage, the advantaged party bears the burden of demonstrating that the agreement was not obtained through undue influence," especially when the only consequences of that duty iterated in the statute itself are open books, full disclosure, and an accounting of all profits. The additional

conclusion that undue influence should be presumed anytime one spouse gains an advantage over the other is hardly logically necessary, even if wise.

In any event, this third presumption now trumps the other two and, in this case, defeated both the claim that the property was held in joint tenancy because of the language in the deed, under Evid C §662, or was held in community property, under Fam C §2581. To rebut that presumption, Ms. Delaney had to show that her husband was not unduly influenced when he executed the deed. As I speculated in an earlier column (Bernhardt, *Love Your Husband—But Don't Lend Him Money*, 26 CEB RPLR 40 (Jan. 2003)), that may be hard to show even when it is true. She might take him to see an attorney, but it would have to be his attorney, not hers, and how likely is it that his attorney would advise him that it was in his best interests to give away his property to his wife? —*Roger Bernhardt*