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Digest: In re Marriage of Sonne

Blair A. Russell

Opinion by Baxter, J., with George, C.J., Kennard, Werdegarr, Chin, Moreno, and Corrigan, JJ.

Issue

What portion of an employee's retirement account is treated as community property, and what portion is treated as separate property, where an employee commingles community property and separate property interests in that retirement account?

Facts

Gordon Sonne was the former Sheriff-Coroner-Public Administrator of Monterey County and a member of the California Public Employees' Retirement System (CalPERS).¹ Members of CalPERS participate in a retirement plan, which consists of an annuity (funded by member contributions) and a pension (funded by employer contributions).² A member's retirement allowance is computed primarily by calculating the number of years a member has served and contributed to CalPERS, otherwise called "service credit."³ During his employment, Sonne accrued a certain amount of service credit in relation to his duties under the CalPERS retirement plan.⁴ During the time Sonne accrued his service credits, he was married to his first wife Dalia; in 1995, Sonne transferred to Dalia one-half interest of his service credit (8.677 years of service credit) pursuant to their divorce, in which Dalia waived all future rights to claim the retirement benefits of Sonne's retirement account.⁵ Following the transfer of his one-half interest of service credit, Sonne remarried to Theresa Sonne.⁶ During the Sonne-Theresa marriage, Sonne had begun to redeposit contributions to his CalPERS account with the use of community funds deducted from his salary, in order to account for the one-

¹ *In re Marriage of Sonne*, 48 Cal. 4th 118, 121 (2010).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

half interest he transferred to Dalia.⁷ When Sonne and his new wife Theresa later separated, the community (funds from the Sonne-Theresa marriage) had redeposited 70.83% of the payments of the original 8.677 years of service credit that was transferred to Dalia.⁸

During the dissolution proceeding of Sonne's second marriage, Sonne and Theresa came up with competing values of how to calculate the amount of money that belonged to the community after Sonne had used community funds to recoup the amount of service credit lost resulting from Sonne's one-half interest settlement to Dalia.⁹ Sonne's expert argued that the community had a right to reimbursement of only the funds used to make the redeposit.¹⁰ However, Theresa's expert contended that "the service credit should be allocated between community and separate property in the same proportion by which those estates had contributed to the redeposit."¹¹ In other words, under Sonne's method of calculation, the community would have a right to the \$31,938.92 that had been redeposited into the CalPERS account (this represented only 5.374% of the actuarial value of the 8.677 years of service credit, which was now valued at \$594,322).¹² Under Theresa's approach, while the value of the 8.677 years of service credit was now \$594,322, Sonne had only originally invested \$45,090.24 toward that amount in the Sonne-Dalia marriage.¹³ Theresa then argued that because the community redeposited \$31,938.92 of the original \$45,090.24 (representing 70.83% of the total value), the community was then entitled to 70.83% of the balance of the service credit account valued at \$594,322.¹⁴ The substantial difference in the amount that would result under these competing methods of valuation was the subject of this litigation.

The trial court adopted Theresa's approach and reasoned that because the community had contributed 70.83% of the redeposit, the community was entitled to 70.83% of the shares of the service credits from the Sonne-Dalia marriage.¹⁵ The trial court chose this method because it found that the service credit from the Sonne-Dalia marriage was to be considered community

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 122.

¹⁰ *Id.* at 122–23.

¹¹ *Id.* at 123.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

property.¹⁶ The Court of Appeal agreed with the trial court that the service credit was community property, but for different reasons.¹⁷ The Court of Appeal reasoned that Sonne did in fact have a separate property interest in his premarital service to his employer “which created his right to repurchase the service credits,” but because Sonne had commingled community property with separate property, there was no way to trace what proportion of the service credit was attributable to him.¹⁸ As such, the Court of Appeal found no way to overcome the presumption that the service credit became community property.¹⁹ According to the Court of Appeal, Sonne’s evidence as to the proper proportion of service credit attributable to him was discredited by the trial court, and as such, the trial court properly concluded that the community property presumption applicable to property purchases during a marriage with community funds required that the service credits be considered community property.²⁰ The Court of Appeal then rejected Sonne’s argument that only a portion of the funds used to repurchase the service credits should be considered community property.²¹ Sonne petitioned for review and the California Supreme Court granted the petition.²²

Analysis

The California Supreme Court declared that the trial court’s ruling that the service credit from the Sonne-Dalia marriage was community property was primarily a question of law to be reviewed de novo.²³ The court recognized that the community owns all such rights attributable to employment during marriage before separation.²⁴ In addition, the rule of law, which must be applied in a dissolution proceeding is that:

[T]he superior court must apportion an employee spouse’s retirement benefits between the community property interest of the employee spouse and the nonemployee spouse and any separate property interest of the employee spouse alone [T]he superior court must arrive at a result that is ‘reasonable and fairly representative of the relative contributions of the community and separate estates.’²⁵

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 123–24.

¹⁹ *Id.* (citing CAL. FAM. CODE § 760 (West 2010)).

²⁰ *Id.* at 124.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* (citing *In re Marriage of Lehman*, 18 Cal. 4th 169, 177 (1998)).

²⁵ *Id.* (quoting *Marriage of Lehman*, 18 Cal. 4th at 177).

Applying this rule of law, the court found that there was a failure to make a reasonable and fair allocation between the contributions of the community and that of the separate property interest.²⁶ The failure occurred when the lower court gave credit to the community for redeposits as consideration for the service credit.²⁷ According to the court, a redeposit of member contributions for a prior period of service is only credit to a previously rendered service.²⁸ By failing to follow this analysis, the lower court gave no credit to Sonne's service for which he received service credit, and failed to recognize that the service credit he received was received prior to his marriage with Theresa, thus was not attributable to their marriage.²⁹ The 8.677 years of service credit which Theresa sought a portion of, was earned during the Sonne-Dalia marriage and was an asset of that community alone.³⁰ When Sonne apportioned his one-half interest to Dalia, and she withdrew that interest, all future CalPERS pension and retirement rights remained with Sonne.³¹ As such, any portion of funds that were attributable to employment before the Sonne-Theresa marriage is separate property of Sonne.³²

The court stressed the issue that Sonne, after giving Dalia a one-half interest of his service credits, retained the right to recoup his previously earned service credits, which Sonne rightfully retained as separate property.³³ However, because Sonne was able to recoup his service credits with the help of community funds from his marriage with Theresa, the problem of how to treat the comingling of community funds and that of separate property arose.³⁴ In evaluating this problem, the court noted that the Court of Appeal erred in finding that where separate and community funds are commingled in a way that is impossible to decipher, the whole will be treated as community property.³⁵ The Court of Appeal erred by assuming that the retirement fund is "a unitary and indivisible asset."³⁶ Instead, a public employee's retirement consists of two components, the annuity and the pension.³⁷ Contributions to an annuity consist of

²⁶ *Id.* at 124.

²⁷ *Id.* at 125.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 126.

³² *Id.* (citing CAL. FAM. CODE § 770(a)(1) (West 2010)).

³³ *Id.*

³⁴ *Id.* at 127.

³⁵ *Id.* (citing *In re Marriage of Mix*, 14 Cal. 3d 604, 611 (1975)).

³⁶ *Id.*

³⁷ *Id.* (citing CAL. GOV. CODE §§ 20000–20085 (West 2010)).

accumulated contributions of a member's retirement plan, and the annuity makes payments for life upon retirement.³⁸ Pensions, on the other hand, are comprised of contributions of employer-controlled funds, and they make payments for life upon retirement.³⁹ When Sonne-Theressa made contributions with community funds to redeposit and recoup the amount of service credit in Sonne's member account, these represented accumulated contributions, and represented payments to the annuity component of Sonne's account.⁴⁰ The pension component of Sonne's member account obligates the employer to pay the pension in consideration for Sonne's service—an obligation that was commenced during the Sonne-Dalia marriage.⁴¹ Therefore, the pension component, which was derived solely from Sonne's service as Sheriff during his previous marriage, represents separate property and not community property.⁴² Being separate property, Theressa had a claim only to a portion the annuity component of the retirement account.⁴³ The Court of Appeal erred in finding that, because the redeposit of contributions to the retirement account were made with community funds, the community was entitled to a fraction of the entire retirement, including the portion during the Sonne-Dalia marriage.⁴⁴ Because the redeposit was a member contribution, and member contributions are used to purchase the annuity portion of the retirement account, the community is only entitled to a portion of the annuity.⁴⁵ The remaining portion is that of the pension, which is derived not from member contributions, but from contributions of the employer.⁴⁶ The pension portion of the retirement account represents a much larger portion than that of the annuity, and any award as to the pension in favor of the Sonne-Theressa community was improper.⁴⁷

The court then ruled that the trial court should have awarded only a portion of the annuity as community property during the Sonne-Theressa marriage.⁴⁸ In essence, the trial court was partially correct in ruling that the community was entitled to a share of the retirement account, but it erred in failing to find that the community was entitled only as to the

³⁸ *Id.* (citing CAL. GOV. CODE § 20018).

³⁹ *Id.* (citing CAL. GOV. CODE § 20054).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 127–28.

⁴³ *Id.*

⁴⁴ *Id.* at 128.

⁴⁵ *Id.* (citing CAL. GOV. CODE §§ 20018, 21362.2(a) (West 2010)).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 129.

portion comprising the annuity. However, no evidence was presented at trial in regard to calculating the amount of contributions the community had made to the annuity portion, since neither Sonne nor Theresa adopted this approach in their valuations.⁴⁹ Under the rule the court adopted from previous authority, the method of apportionment must be reasonable and fairly representative of the contributions from the community and that of separate property.⁵⁰ The court then found that the best method that would accomplish this result would involve valuing the share that the community had made to the annuity portion of the retirement account, and awarding a portion of that amount to each member of the community.⁵¹ Because the parties had not presented evidence as to method of valuation of the annuity, the court gave authority to the trial court to review the apportionment under that method.⁵²

Holding

The court reversed the ruling of the Court of Appeal as to the valuation of what portion of the retirement account was community property, but affirmed the Court of Appeal decision in regard to the proposition that some portion of the retirement account constituted community property arising from the Sonne-Theresa marriage.⁵³ The court then remanded the matter to the Court of Appeal for remand to the trial court, with instructions that the trial court take evidence as to the proper apportionment owed to the community as to the annuity portion of the retirement account only.⁵⁴

Legal Significance

The California Supreme Court's holding resolves the critical assumptions made by both the trial court and Court of Appeal in reaching their decision. It addresses the assumption that where community property (in this case funds) is commingled with separate property, that one must unequivocally trace the proportion contributed by the community and the proportion contributed from separate property in order to avoid the presumption that the community gains title to the whole. According to the court, the apportionment to separate and the apportionment to community property must be reasonable and

⁴⁹ *Id.*

⁵⁰ *Id.* (citing *In re Marriage of Lehman*, 18 Cal. 4th 169, 187 (1998)).

⁵¹ *Id.* at 129.

⁵² *Id.*

⁵³ *Id.* at 129–30.

⁵⁴ *Id.*

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fair and must account for the relative contributions made by the community and by the separate individual. In resolving the fundamentally flawed analysis given by the Court of Appeal, the court stressed that a retirement account is not a unitary asset. It consists of both a pension and annuity under California Code and separate analyses for contributions to both the annuity and the pension must be taken into account.