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ISSUE: Separate property funds used for community purposes under

California Family Law

Introduction

The issue hinges on whether or not the parties to a valid marriage after their separation shall be entitled to reimbursement after using his or her separate property funds for community purposes in accordance to California Family Law.

Well-settled is the rule in this jurisdiction that when a party uses his or her separate property for community purposes after their separation, such party shall be entitled to the reimbursement for whatever expenses that was incurred. Such reimbursement is in the nature of an “ Epstein credit” under California Family Law. However, the law requires that reimbursement under the Epstein credit rule shall only be allowed provided that the source of funds sought to be reimbursed can be traced to a separate property of the claiming spouse.

Discussion

The Supreme Court held in the case of *In re Marriage of Epstein* (1979) that husband is allowed to claim for reimbursement to recover amounts that were spent after the separation of the spouses since these expenses were payments to cover pre-existing community obligations. In such case, the husband has consistently given his wife with monthly payments and made payments to several household bills even after their separation. With such arrangement, the wife no longer had to go to court and seek an order for temporary support.

The Supreme Court held that the husband reimbursement should be reimbursed for the amounts he spent for the maintenance of the family residence even after the separation of the spouses. This was the ruling in the case of Elaine Prentis-Margulis v. Alan D. Margulis (2011). In this case, one of the issues brought before the court is whether or not the husband, Alan is entitled to reimbursement from the community property for after he made post-separation payments on community debts that redounded for the benefit of the wife, Elaine. The Supreme Court reversed the ruling of the trial court after finding that the husband, Alan should not be entitled to reimbursement from the community property after making post-separation payments to satisfy community debts, without knowing whether he used his separate funds to make such payments.

Further, the Supreme Court held that in this case, the husband in fact admitted that it will be impossible to trace whether the source of the payments came from either a community property or separate property since he freely commingled community property with separate property by using several checking accounts he owned, after the separation.

Conclusion

Thus, the reimbursement for separate mortgage payments of community property after separation shall not be governed by Section 2640 of the Family Code, unlike in the case of pre-separation payments. In effect, such reimbursement shall not only be limited to principal reduction payments as held in the case of Marriage of Hebring (1999). In this case, the Supreme Court held that the limitations on reimbursement for separate property contributions for the acquisition of community property imposed by Civil

Code Section 4800. 2 cannot be applied in this instant case. Further, it was held that the discretion of the trial court should not be limited to the order of reimbursement to cover post-separation separate property payments to satisfy community obligations. In a long line of cases, the Supreme Court ruled that the principle of Epstein credit shall not be allowed in all cases. In the case of Marriage of Green (1989), the court held that no reimbursement shall be made when the house and car payments are made by the claiming spouse that represents partial satisfaction of support obligations. In a similar case of Marriage of Stallworth (1987), it was settled that there shall be no reimbursement is allowed for payments on residence that the paying party was occupying. In the case of Marriage of Tucker (1983), the Court ruled that there shall be no reimbursement to pay for the repair expenses of refrigerator that is in possession of the paying party wherein the payments are not substantially in excess of the usage value.

The settled rule is that reimbursement should not be ordered when payment was made under circumstances in which it will be unreasonable to expect payments. Reimbursement will not apply to the following instances: 1.) Prior agreement between the parties that payment will not be reimbursed; 2.) The intention of the paying party is for the purpose of making it as a gift; 3.) The payment was for the discharge of the paying party's child support duty or spousal duty; and 4.) The payment was made on a debt in order to acquire or preserve an asset that is being utilized by the paying party, and such amount was not substantially in excess of the usage value.

Finally, it shall be under the sole discretion of the court to decide and exercise its traditional equity powers to determine whether an order for

reimbursement to a spouse is reasonable, after he or she had used a separate property to pay an amount in excess of what is required by law and to prevent unjust enrichment of the spouse entitled to receive support.

Works Cited:

Elaine Prentis-Margulis v. Alan D. Margulis (2011) 198 CA4d 277

In re Marriage of Epstein (1979) 24 Cal. 3d 76

In re Marriage of Green (1989) 213 CA3d 14

In re Marriage of Hebring (1989) 207 CA3d 1260

In re Marriage of Stallworth (1987) 192 CA3d 742

In re Marriage of Tucker (1983) 141 CA3d 128