Supreme Court Case No. S193990

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re Marriage of FRANKIE and RANDY VALLI:

FRANKIE VALLI,

Petitioner and Respondent,

v.

RANDY VALLI,

Respondent and Appellant.

ANSWER TO PETITION FOR REVIEW

After a Published Decision By the Court of Appeal, Second Appellate District, Division Five, Case No. B222435

Los Angeles Superior Court Case No. BD414038
The Honorable Mark Juhas
Judge of the Superior Court

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I. INTRODUCTION

In rendering its decision, the Court of Appeal applied the rule set forth in *Marriage of Lucas* (1980) 27 Cal.3d 808 [166 Cal.Rptr. 853, 614 P.2d 285] (*Lucas*), that the affirmative act of specifying a form of ownership in the conveyance removes property acquired by a married person during marriage from the more general presumption of community property so that the more specific form of title presumption, now codified in Evidence Code §662, applies in characterizing the property. *Id.* at pp. 814-815. The Petition for Review misrepresents the state of the law. It does not cite *Lucas* and ignores the ruling.

In applying the rule in *Lucas*, the Court of Appeal correctly applied well-established law to a new set of facts and circumstances presented by the *Valli* case. The Court of Appeal concluded that a life insurance policy on the life of petitioner and respondent, Frankie Valli (Frankie), naming respondent and appellant, Randy Valli (Randy) as both the policy owner and beneficiary is Randy's separate property under the "form of title" presumption–a presumption which was not rebutted by Frankie.

The Court of Appeal opinion was a specific application of the rule in *Lucas* to a narrow and very unique set of facts and circumstances. Frankie, who was the transacting spouse, unilaterally and with the assistance of his insurance agent and business manager, intentionally divested himself of all indicia of ownership and made Randy the legal and beneficial owner of the policy from the inception of title. The claim in the Petition that "hundreds of thousands of California spouses will get a nasty surprise" is a fiction based on a false premise. This decision is not one of broad interest or effect. It is

unlikely to affect spouses other than possibly high net worth individuals who are trying to decrease the value of their taxable estate by deliberately divesting themselves of all incidents of ownership in insurance policies to avoid taxes.

As discussed below, Frankie seeks Supreme Court review by mischaracterizing the facts of this particular case, the decision of the Court of Appeal and the law. There is no conflict among the lower courts and no important unsettled question of law is at issue in this case. The case does not meet any of the other criteria for granting review set forth in California Rules of Court, Rule 8.500 subdivision (b), and thus review should not be granted. Frankie's own disagreement with the Court of Appeal's decision is not sufficient to warrant review. The well-reasoned unanimous opinion of the Court of Appeal, should stand.

II. THERE ARE NO GROUNDS FOR SUPREME COURT REVIEW

A. There is No Conflict Among Lower Court Decisions

The Petition for Review states incorrectly that the Court of Appeal decision "conflicts with virtually all published marital property cases in the last 150 years of California history and is simply wrong." The Petition is simply wrong. The Court of Appeal opinion in this case is not in conflict with any of the decisions cited in the Petition or any other marital property cases. In fact this is the first published case to decide the narrow question presented. The Petition claims that the decision is in conflict with numerous California decisions holding that where the premiums on a spouse's life insurance policy are paid with community funds, the policy is community property. The Petition would have the Supreme Court review this case based on other cases with entirely different facts. In all of the purportedly conflicting cases, one

spouse is both the policyholder and the insured. In the instant case, the insured spouse is also the transacting spouse who purposely divested himself of all indicia of ownership and named his spouse as both owner and beneficiary.

In addition, the cases cited in the Petition establish that when a policy is acquired with community funds, the uninsured spouse has a beneficial interest in half the proceeds of the policy that cannot be defeated by the insured spouse. This common law rule is codified in Probate Code § 5020. The form of title presumption provides that the owner of legal title to property is rebuttably presumed to be the owner of full beneficial title. The presumption would be rebutted where the insured holds legal title and the uninsured spouse holds some incidents of beneficial title, so the general presumption of community property would apply in those types of cases. That is not the situation here.

In the instant case the insured spouse Frankie, purposely caused the uninsured spouse Randy, to be vested with both legal and equitable title to the policy when the policy was taken out. The Court of Appeal decision is entirely consistent with the cases cited in the Petition for Review. It is also consistent with California law as expressed in cases such as *In re Marriage of Holtemann* (2008) 166 Cal.App.4th 1166 [83 Cal.Rptr.3d 385], and *In re Marriage of Lund* (2009) 174 Cal.App.4th 40 [94 Cal.Rptr.3d 84], which hold essentially that once the character of property is deliberately established for one purpose, it is established for all purposes. The Court of Appeal reached the correct result in the *Valli* case based on the law and the facts.

There is no conflict between the challenged decision and the decisions from other appellate districts regarding the applicability of the presumption of

title when married persons specify a form of ownership at the time of acquisition of property. See; *Lucas*, *supra*, 27 Cal.3d at pp. 814-815 [166 Cal.Rptr. 853, 614 P.2d 285]; *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176, 186-187 [86 Cal.Rptr.3d 624] (*Brooks*). The Court of Appeal merely articulated the existing rule and then applied it to the narrow and unique facts and circumstances of this case.

B. No Important Unsettled Question of Law is Presented

The Petition does not present an important unsettled question of law. Frankie states that there are four issues for Supreme Court review, but none fairly characterizes the Court of Appeal's decision, the facts of the case or the law or warrants such review. The first claimed issue is whether the record title presumption applies to property acquired by spouses during marriage with community funds in the absence of any independent evidence that they intended that said property be characterized as the titled spouse's separate property. That purported statement of an unsettled issue simply reveals a misunderstanding of settled law. The presumption of title is rebuttable by clear and convincing evidence of a common understanding to the contrary. As stated by this Court in *Lucas*:

> "The rule requiring an understanding or agreement comes into play when the issue is whether the presumption arising from the form of title has been overcome. It is supported by sound policy considerations, and we decline to depart from it. *Lucas*, *supra*, 27 Cal.3d at p. 815 [166 Cal.Rptr. 853, 614 P.2d 285].

In this case, Frankie's testimony supported the conclusion that the policy is Randy's property. Furthermore, Frankie offered no evidence to rebut

the title presumption, the alleged fiduciary duty issue or the alleged transmutation issue as noted in the opinion of the Court of Appeal. *In re Marriage of Valli* (2011)195 Cal.App.4th 776, 784-787 [124 Cal.Rptr.3d 726] (*Valli*).

The second purported issue is whether acquisition of property from a third party constitutes a transmutation triggering the writing requirements of Family Code §852. The Petition suggests that the Opinion will lead to perjured testimony regarding oral agreements or "pillow talk" to overcome the presumption of title because the opinion confines the definition of "transmutation" to transfers of property between spouses and not acquisitions from third parties. The Petition states: "Both *Brooks* and the Opinion recognize that record title can be overcome by clear and convincing evidence of an 'oral agreement or understanding.'" This statement misrepresents both opinions.

In fact, the word "oral" does not appear in either opinion except in a footnote in *Valli* quoting a statutory reference to "oral stipulation of the parties in open court." *Valli*, *supra,* 195 Cal.App.4th 776, 781, n.8 [124 Cal.Rptr.3d 726] (*Valli*). As set forth above, *Valli* is the first published opinion to apply the presumption of title to the narrow and unique set of facts in this case. The melodramatic predictions in the Petition are merely speculative. It is highly unlikely that a court would find "pillow talk" to be the clear and convincing evidence needed to overcome the presumption of title.

The Petition states correctly that Family Code §852 does not define "transmutation." However, Family Code §850 gives married persons the right to "transmute"property by agreement from separate property into community

property, from community property into separate property, or from separate property of one spouse to separate property of the other. This implies that, in order for a transmutation to occur, the property must already have been characterized as community or separate. In a transaction with a third party, property of a third party becomes property of one or both of the spouses. Characterization occurs at the time of acquisition. Where there is documentary evidence of how title is taken, either jointly or separately, presumptions arise regarding the character of the property. Where there is written evidence that title is taken separately, the Evidence Code section 662 presumption applies to make the property presumptively separate. *Lucas*, *supra*, 27 Cal.3d at p. 818 [614 P.2d 285, 166 Cal.Rptr. 853]; *Brooks*, *supra*, 169 Cal.App.4th at p. 190 [86 Cal.Rptr.3d 624]. When there is written evidence that title is taken jointly, the Family Code section 2581 presumption applies to make the property presumptively community.[1] In either case, the source of funds for the acquisition is irrelevant unless the presumption is rebutted.

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[1] Family Code section 2581 provides: "For the purpose of division of property on dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, or tenancy by the entirety, or as community property, is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following:
(a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.
(b) Proof that the parties have made a written agreement that the property is separate property."

The legislative history of section 852 as set forth *In re Marriage of Steinberger* (2001) 91 Cal.App.4th 1449 [111 Cal.Rptr.2d 521], and quoted in the Petition states that the section was enacted to require a writing to evidence "transfer of property between spouses."

> "The convenience and practice of informality recognized by the rule permitting oral transmutations must be balanced against the danger of fraud and increased litigation caused by it. The public expects there to be formality and written documentation of real property transactions, just as it expects there to be formality in dealings with personal property involving documentary evidence of title, such as automobiles, bank accounts, and shares of stock. Most people would find an oral transfer of such property, even between spouses, to be suspect and probably fraudulent, either as to creditors or between each other. Recommendation Relating to Marital Property Presumptions and Transmutations, 17 Cal. L. Revision Common Reports 205, 213–214 (1984)." *Id.* at p.1465.

It is precisely because there is formality and written documentation of the form of ownership when title is conveyed by a third party that the presumption of title applies to transactions with third parties. As stated in *Lucas*, "where there is no written indication of ownership interests as between the spouses, the general presumption of community property may be overcome simply by tracing the source of funds used to acquire the property to separate

property." *Lucas, supra*, 27 Cal.3d 808, 815 [166 Cal.Rptr. 853, 614 P.2d 285].

The importance of this question is further diminished by the fact that the decision is unlikely to affect spouses other than possibly high net worth individuals who deliberately divest themselves of all indicia of ownership in insurance policies to prevent the proceeds from being included in valuing their estate.[2]

The last two proffered issues are related to Frankie's contention that the fiduciary duties between spouses and the presumption of undue influence apply not only to transactions between spouses but also to transactions between a spouse and a third party. This case does not present that issue for review because the Court of Appeal expressly declined to answer the question stating:

> "We need not resolve this issue, however, because Randy prevails under either theory. ¶ If Randy's theory is correct, she prevails because the acquisition of the policy resulted from a third party transaction and not from a transaction between spouses. If Frankie's theory is correct, Randy still prevails

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[2] 26 U.S.C.A. § 2042 provides that the value of the gross estate shall include the value of all property receivable by the executor as insurance under policies on the life of the decedent receivable by the executor as insurance and receivable by beneficiaries "as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person."

> because the third party transaction at issue was between Frankie and a third party and not between Randy and a third party. Randy could not have owed a fiduciary duty to Frankie in a transaction in which she did not participate. Under the theory that the fiduciary duties in section 721 apply to transactions between a spouse and a third party, the fiduciary duty would apply only when the transacting spouse gains an advantage over the spouse who is not a party to the transaction. (See In re Marriage of Haines, *supra*, 33 Cal.App.4th at p. 296, 39 Cal.Rptr.2d 673.) No such advantage was obtained here." *Valli*, *supra*, 195 Cal.App.4th at p. 786 [124 Cal.Rptr.3d 726].

The Petition states that "the Opinion found that Randy did not benefit and thus the presumption of undue influence was not triggered." The Petition mischaracterizes the Court of Appeal decision. The Court of Appeal opinion actually states that the presumption of undue influence was not triggered because the transacting spouse, i.e. Frankie, did not gain an advantage over the spouse who is not a party to the transaction with the third party, i.e. Randy. *Valli*, *supra*, 195 Cal.App.4th at p. 786 [124 Cal.Rptr.3d 726]. The Petition asserts that a fiduciary obligation applies to the spouse who had no dealings with the third party in the particular transaction in issue. That does not make any sense. However, in the *Valli* case, the Court of Appeal held that "[even if the fiduciary duties in [Family Code] section 721 apply to transactions between a spouse and a third party, the presumption of undue influence was rebutted by

the evidence at trial." *Ibid.* So the decision would remain the same under either theory.

III. THE PETITION MISCHARACTERIZES THE COURT OF APPEAL OPINION, THE LAW, AND THE FACTS OF THIS CASE.

Frankie did not petition for rehearing in the Court of Appeal. Nevertheless, despite the limitations of California Rules of Court, Rule 8.500 subdivision (c), the Petition includes a lengthy "Statement of Facts." The statement not only ranges far beyond the Court of Appeal opinion's statement of facts and misstates the record in many instances. The Petition also mischaracterizes the Court of Appeal opinion and reaches conclusions that are not supported by the record. Some examples are as follows.

On Page 2 of the Petition, the Petition states that "During marriage, Randy suggested to Frankie (the husband) that they obtain the policy when he was in the hospital ...." Also on Page 2, the Petition states: "The only evidence presented about the acquisition of the policy was that Frankie agreed with Randy's suggestion to obtain life insurance. On Page 20, the Petition states: "She requested that he buy the policy." On Page 28, the Petition states: "The policy was her idea and she participated in the process of obtaining it." All of these statements misrepresent the record.

The Appellate Court Opinion was clear that Randy and Frankie discussed acquiring life insurance, but there is no evidence that Randy participated in the acquisition of the policy or suggested that it be placed in her

name. In fact, she was informed by Frankie and his business manager that they were going to make her the owner. The Appellate Court stated:

> "Dennis Gilbert, a life insurance agent, testified that his company sold the policy to the Vallis. According to Gilbert, Randy is the owner and beneficiary of the policy. Randy testified that Frankie and Barry Siegel, Frankie's business manager, told her that "they were going to make [her] the owner," and that she understood that she would be the beneficiary. Frankie testified that he "put everything in Randy's name, figuring she would take care and give to the kids what they might have coming." *In re Marriage of Valli*, *supra*, 195 Cal.App.4th 776, 780 [124 Cal.Rptr.3d 726, 729].

On Page 4 of the Petition, the Petition states that the Court of Appeal held that "regardless of any writing transmuting the property from community into Randy's separate property, the mere act of taking title in her name removed it from the community property presumption and the protection of Family Code § 852 resulting in the unintended gift from Frankie to Randy of $365,032 in cash value plus $3.75 million in death benefits. On page 16, the Petition states: "Per the Opinion, she receives $365,032 in cash value plus $3.75 million in death benefits...." These statements mischaracterize the opinion of the Court of Appeal.

The Court of Appeal recognized that to the extent the community paid premiums after the acquisition of the policy which increased the cash value, that would give rise to a possible reimbursement claim. The Court of Appeal

stated: "Upon remand, we leave to the trial court any reallocation of assets or award of reimbursement in light of our holding." *Valli*, *supra*, 195 Cal.App.4th 776, 787 [124 Cal.Rptr.3d 726, 735].

On Page 5, the Petition states: "If this case stands, hundreds of thousands of California spouses will get a nasty surprise when they learn that the policies on which community property has been paying the premiums for years are in fact the named owner's separate property." On Page 15, the Petition states: "This conflicts with virtually all published marital property cases in the last 150 years of California history and is simply wrong." As set forth above, this is a fiction based on a false premise and is not supported anywhere in either the trial record, the appellate record or the law. There is nothing in the trial record, the appellate record or existing case law to support this claim. Randy's Reply Brief distinguished all of the cases which were first cited by Frankie in his Appellate Brief and are now cited again in the Petition.

On Page 6, the Petition states: "By holding that Section 852's writing requirement does not apply to assets acquired from third parties, community funds used to acquire a new asset are suddenly transmuted into separate property..."

The Court of Appeal did not hold that the premiums are Randy's separate property. The case was remanded back to the trial court to determine whether or not the community is entitled to reimbursement. The inference from the argument above is that title should be determined based on premium payments made after title has already been established. That does not make sense.

On Page 6, the Petition states: "Pursuant to this Opinion, a self-serving spouse can create separate property by arranging for newly acquired property to be titled in his or her name." Not true. "When the spouse who is not the record title holder was unaware that title was taken solely in the name of the other spouse, the form of title presumption does not apply." *In re Marriage of Brooks*, *supra*, 169 Cal.App.4th at p. 192 [86 Cal.Rptr.3d 624, 637], citing In re Marriage of Rives (1982) 130 Cal.App.3d 138, 162, [181 Cal.Rptr. 572].

IV. CONCLUSION

The Petition exaggerates and misstates the facts in the record and mischaracterizes the Court of Appeal's opinion to arguably convince the Supreme Court to review this matter. As set forth above, review is not necessary to secure the uniformity of the law or to decide an important question of law. The case does not meet any of the other criteria for granting review set forth in California Rules of Court, Rule 8.500 subdivision (b) Accordingly, the Petition for review should be denied.

Respectfully submitted,

Dated: July 14, 2011

JAFFE AND CLEMENS

By: _____

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Randy Valli

CERTIFICATION

Pursuant to *California Rules of Court*, Rule 8.204(c), I, Nancy Braden-Parker, certify that WordPerfect X3, the computer program used to prepare this Answer to Petition for Review, reflects that this Answer contains 3633 words.

Nancy Braden-Parker

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 433 North Camden Drive, Suite 1000, Beverly Hills, California 90210.

On July 14, 2011, I served the foregoing document described as:

ANSWER TO PETITION FOR REVIEW

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelopes addressed as follows:

Clerk of the Court (Via Federal Express)
California Supreme Court
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San Francisco, California 94102-4797
(Original and 13 copies of Answer to Petition For Review)

Clerk of the Court (Via Hand Delivery)
Court of Appeal
300 So. Spring Street, 2nd Floor
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 14, 2011, at Beverly Hills, California.

COLLEEN LEMOINE