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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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In re the Marriage of RUDOLFO and LEAH  
CHAVEZ.

C080202

RUDOLFO CHAVEZ,

(Super. Ct. No. FL384913)

Respondent,

v.

LEAH CHAVEZ,

Appellant.

Can a history of spousal abuse negate a finding of undue influence by a spouse who secured an unfair advantage in a marriage settlement agreement? Here appellant Leah Chavez and respondent Rudolfo Chavez ended their marriage and signed a series of marital settlement agreements, some subsequently amended.<sup>1</sup> Leah sought to enforce one

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<sup>1</sup> For the sake of clarity we will refer to the parties by their first names.

of the marital settlement agreements and amendments. The trial court found the marital settlement agreements between the parties arose out of their confidential relationship and were not made at arm's length. Leah, with a superior knowledge of the law, gained an advantage in the agreements, including waivers of community interest in property and unconscionable provisions for spousal support. Rudolfo believed he had no choice but to acquiesce to Leah's demands. The trial court found the agreements void.

Leah, proceeding in pro. per., appeals, presenting a multitude of objections to the trial court's order. We granted the application of eleven California-based nonprofit organizations (amici) to file an amici curiae brief in support of Leah.<sup>2</sup> Amici argue what might appear to be advantages to Leah on the face of the marital settlement agreement might not be viewed as advantages if the domestic abuse in the relationship is considered. Rudolfo did not file a brief. We shall affirm the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Leah and Rudolfo married in 2001 and have four children. The parties disagree on when they separated: Leah states it was 2012; Rudolfo states it was 2013.

Rudolfo filed a petition for dissolution of marriage in Alameda County. In her response, Leah requested that the parties' marital settlement agreement dated June 21, 2012, control and be incorporated into the judgment. Leah filed a small claims action seeking to enforce the terms of a marital settlement agreement. Subsequently, the case was transferred to San Joaquin County.

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<sup>2</sup> The eleven amici curiae organizations are: Family Violence Appellate Project, Asian Americans Advancing Justice—Los Angeles, The California Women's Law Center, Domestic Violence Legal Empowerment and Appeals Project, The Harriett Buhai Center for Family Law, Legal Aid of Sonoma County, Legal Aid Society of Orange County and Community Legal Services in southeast Los Angeles County, The Los Angeles Center for Law and Justice, San Diego Volunteer Lawyer Program, Inc., WEAVE, Inc., Sacramento, and The YWCA Glendale's Domestic Violence Program.

On September 25, 2014, Leah filed a request for an order regarding the modification of child support, spousal support and a request for modification as set forth in the findings and order after hearing filed January 9, 2015. The trial court scheduled a long-cause hearing on Leah's request. Leah presented the trial court with numerous marital settlement agreements, four executed and four not executed. They are dated between 2006 and 2013.

### **Marital Settlement Agreement and First Amendment**

Leah sought to enforce the last marital settlement executed June 21, 2012, and the first amendment to the agreement executed July 13, 2013. Among the marital settlement agreement terms: Leah would be allowed to relocate the children out of the country upon reasonable notice to Rudolfo; child support would be payable by Rudolfo to Leah in "an amount sufficient to provide for the children's needs" and continuing through age 26 as long as they were enrolled in college; Rudolfo would pay three-fourths of all day care, extracurricular activities, school tuition, college tuition, and uncovered medical costs; Rudolfo would pay Leah spousal support of \$1,500 per month until either party's death or Leah's marriage; a waiver of spousal support by Rudolfo; and a provision that spousal support is non-modifiable except as provided by law.

In addition, during the separation the parties were to maintain a joint account to pay household expenses and both parties waived credits or reimbursements for money paid by the community or a party's separate property for mortgage payments on community or separate property or on school loans. All property of either party would be the separate property of that party, and that as a result of the agreement, assets that would have been community property would be deemed separate property.

Attached to the settlement agreement were exhibits outlining the property and financial obligations of each party and the balances of various bank accounts. Each spouse attached separate statements. Rudolfo's stated he would continue to work two jobs or otherwise maintain his income at the current level or higher.

The first amendment modified the spousal support provision. Leah would be allowed to co-habit with a person of the opposite sex or same sex and still receive spousal support payments. Rudolfo would continue to pay Leah spousal support or \$1,500 “even if Wife becomes employed and no matter what her income might be in the future . . . .” Rudolfo would maintain Leah on health, dental, and vision insurance for her lifetime. Rudolfo waived spousal support and stated he understood that the court “will forever give up jurisdiction regardless of any circumstances that may arise.” The parties were to maintain two joint accounts into which Rudolfo’s payroll check was to be deposited.

In addition, the first amendment included a waiver of final declarations of disclosure, reciting that the parties had exchanged preliminary declarations and income and expense declarations. Under the amendment the agreement “may be amended or revoked ONLY by a written agreement signed by both parties. The amended agreement or revocation will be enforceable without consideration. THE ENTIRE AGREEMENT IS NOT MODIFIABLE BY THE COURT.”

### **Leah’s and Rudolfo’s Versions of Events**

Leah testified there were many reasons for the multiple agreements she drafted over the years. Leah had inherited property and wanted to keep it as her separate property. As their family grew, both she and Rudolfo wanted to ensure that the family was taken care of in the event of a divorce. Leah gave up her job to stay home with the children. With each agreement, the couple sat down and reviewed them together. Rudolfo could review the agreements and seek an attorney’s advice. However, Rudolfo declined to seek counsel. As Leah noted, in one of his statements Rudolfo specifically stated seeking counsel would be a “waste of money.”

According to Leah, Rudolfo freely and voluntarily entered into the marital settlement agreement and first amendment and understood the legal ramifications of each. In addition, Leah contends there was adequate consideration since she gave up her job to stay home with the children. The agreement did not give her any property that was not

already her separate property. In consideration of Rudolfo's waiver of her separate property, the agreement provided that Rudolfo's income and retirement were his separate property. However, the court noted Rudolfo testified he did not have a retirement, and the agreement provides that all contributions and interests in a retirement in either party's name would be considered community property.

Rudolfo confirmed his handwriting and signatures on the marital settlement agreement and the separate spouse statements. Rudolfo denied freely entering into any of the marital settlement agreements prepared by Leah. According to Rudolfo, every time he left the house following an argument between them, Leah would not allow him back in the house unless he agreed to sign a document she had prepared. The documents were already drafted and Rudolfo had minimal input into the agreements. Leah also sent the notary to his work to get his signature immediately.

Rudolfo testified Leah would exert pressure by emptying their bank accounts, leaving him with no money. The first time he left the house, Rudolfo withdrew the money from the bank. After each subsequent fight, the couple would race to the bank to see who could get to the money. Leah would also cancel his debit card. Rudolfo claimed an interest in Leah's properties, since his income paid the mortgages. The marital settlement agreement provides that his income is his separate property. Rudolfo's income was depleted during the marriage, partly as a result of payments on Leah's properties. The only bank accounts with significant funds belonged to Leah.

Rudolfo stated the words on the marital settlement agreement spouse statement were not his. Instead, Leah wrote the statement and then Rudolfo copied it. In light of this testimony, the trial court found it "clear" the words were not Rudolfo's.

### **Trial Court's Order**

After reviewing the evidence before it and the applicable law, the trial court concluded: "[T]he numerous MSAs [marital settlement agreements] executed between the parties arose out of their confidential relationship as husband and wife and were not

made at arm's length. Wife, who had the superior knowledge of the law, clearly gained an advantage in these agreements, including waivers of community interest in property and unconscionable provisions for spousal support. The final MSA and 1<sup>st</sup> Amendment represent a series of agreements foisted on Husband by Wife, who because of his lack of understanding of the law and his desire to return home to his children, felt he had no choice but to succumb to Wife's pressure. The court finds that Husband did not freely and voluntarily, with knowledge of all facts and legal effect, enter into these agreements." The court found the agreements void.

### **Subsequent Litigation**

Leah filed a motion for reconsideration or a motion for a new trial. The motion presented a variety of challenges to the order and objections to the trial court's version of events. On the subject of domestic abuse, Leah alleged the trial court erred in allowing Rudolfo to introduce evidence over her objection that he was found not guilty following a criminal trial for domestic violence. Leah argued collateral estoppel prevented Rudolfo from relitigating the issue "as another court had already found that he had perpetrated domestic violence issuing a Final Restraining Order . . . protecting Wife and the Children, with no custody or visitation for Husband, and he was ordered to attend a 52 Week Batterer intervention program. Wife and children had been the victims of domestic violence by Husband for years."

In its order after the hearing on Leah's motion for reconsideration or motion for a new trial the court noted with respect to the domestic violence claim that Leah first raised the issue of domestic violence in her trial brief and during her testimony. The incident in question occurred the same day that the first amendment was signed by the parties. The court reasoned: "Thus, the court heard evidence regarding what transpired that day and whether the incident was relevant to the motives for executing the agreement. The court did not re-litigate the issue as alleged by Wife. The court would also note that although Wife finds fault with the court for allowing Husband to address the domestic violence

incident once Wife raised the same, Wife again raised the issue in her instant pleading, arguing that ‘by the very nature of domestic violence Husband was the party with the “power.” ’ Wife cannot expect that the court would allow her to raise topics, and then sustain her objection when Husband seeks to respond to the same.” The court ultimately denied the motion.

Leah filed a timely notice of appeal.

Amici filed a brief zeroing in on the history of domestic abuse between Leah and Rudolfo. During their marriage, Leah states Rudolfo abused her, including physically assaulting her 40 to 50 times. Over time, the abuse worsened and Leah became terrified of her husband.

In 2013, after signing the first amendment, Leah stated Rudolfo slammed her to the ground, preventing her from breathing and causing her to fear for her life. However, Leah admitted Rudolfo was found not guilty in the domestic violence case. Rudolfo told police he did not throw Leah to the ground, but “bear-hugged” her. He disputed Leah’s version of events. Rudolfo was arrested and the court issued a protective order against him. Subsequently, the family law court issued a restraining order after hearing effective until 2019 and prohibiting Rudolfo from harassing or contacting Leah and their children.

According to Leah, throughout their marriage Rudolfo called her derogatory names, told her no man would want her after he sliced her face up, and threatened to kill her if she left him. Rudolfo prevented her from paying off her student loan debt, forbade her from paying credit card debt in her name, ruined her credit, and controlled their money.

However, as previously discussed, Rudolfo testified Leah controlled their finances. Every time they fought, Leah would have a new agreement on the table waiting for him when he returned home. Rudolfo signed the agreements to be able to come back to the house. He believed he was coerced into signing. Leah testified about the domestic abuse during the hearing on the marriage settlement agreement.



## DISCUSSION

### Duty in Marital Transactions

Family Code section 721, subdivision (b)<sup>3</sup> provides that “in transactions between themselves spouses are subject to the general rules governing fiduciary relationships that control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of each other.”

If one spouse secures an advantage from an interspousal transaction, a statutory presumption arises under section 721 that the advantaged spouse exercised undue influence and the transaction will be set aside. Generally, a spouse obtains an advantage if the spouse’s position is improved, the spouse obtains a favorable opportunity, or otherwise gains, benefits, or profits. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1519 (*Balcof*).

When a presumption of undue influence applies to a transaction, the spouse who was advantaged by the transaction must establish that the disadvantaged spouse’s action was (1) fully and voluntarily made; (2) with full knowledge of all the facts; and (3) with a complete understanding of the legal effect of the transaction. (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 738-739 (*Burkle*)). The advantaged spouse bears the burden of rebutting the presumption by a preponderance of the evidence. (*Balcof, supra*, 141 Cal.App.4th at pp. 1519-1520.)

### Standard of Review

Whether a spouse secures an unfair advantage from a marital agreement and whether that spouse rebuts the presumption of undue influence are questions of fact. We review the trial court’s findings under the substantial evidence test. (*Burkle, supra*,

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<sup>3</sup> Further undesignated statutory references are to the Family Code.



139 Cal.App.4th at p 737.) Our review begins and ends with a determination of whether there is in the record substantial evidence, contradicted or uncontradicted, which supports the result reached. We assume in favor of the trial court’s findings the existence of every fact which the court could have reasonably deduced from the evidence. (*Balcof, supra*, 141 Cal.App.4th at p. 1521.)

The rules of appellate procedure apply to Leah even though she is representing herself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.) A party may choose to act as his or her own attorney. We treat such a party like any other party, and he or she “ ‘is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ ” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.)

### **The Trial Court’s Findings**

The trial court correctly noted that one of the factors to be considered in an undue influence analysis is bargaining disparities between the parties. (*Estate of Nelson* (1964) 224 Cal.App.2d 138, 143.) As the court pointed out: “Wife graduated from law school; Husband did not. Wife, who has represented herself quite adequately through these proceedings, has clearly demonstrated that she knows the law and/or has the knowledge and skill to know how to research the law. Husband has no such legal training. Wife claims she educated him about the law by surfing the internet together, but the court is not convinced.”

Leah acknowledges she possesses a law degree, but argues she “has never passed the bar or practiced law before, has been forced to draft and file her own documents and appear on her own behalf in the divorce matter because she cannot afford an attorney and has no other choice.”

Amici also fault the trial court for focusing on Leah’s law degree. Amici argue domestic abuse can happen to educated people and many abused women with advanced degrees are prohibited from working outside the home as a form of abuse and control.

“Therefore, Leah’s law degree did not shield her from Rudolfo abusing and exerting influence over her.”

Nevertheless, Leah’s legal education was an appropriate factor for the trial court to consider in determining whether she exerted undue influence over Rudolfo. After reviewing Leah’s briefs and conduct during oral argument, the court commented on Leah’s superior intelligence and knowledge of the law. The court did not err in taking Leah’s legal background into account, nor did it make it the determinative factor.

The trial court also analyzed whether one party’s “ ‘position is improved’ ” or if the party “ ‘otherwise gains, benefits, or profits’ ” over the other as a result of the transaction. (*Balcof, supra*, 141 Cal.App.4th at p. 1519.) The court found the marital settlement agreement and the first amendment clearly unfair to Rudolfo, since he gained nothing from either document. Rudolfo never received the minimal property awarded to him in the agreement. The day Rudolfo signed the first amendment, Leah had him arrested and he was not allowed to return to the property even though both agreements provided he could reside there until August 1, 2013.

In addition, the court noted Rudolfo waived spousal support for life, no matter what his circumstances, but was ordered to pay Leah spousal support no matter what her circumstances. The agreements also required Rudolfo to provide Leah with medical insurance for life and to maintain his level of income, even if it meant him working two jobs. After reviewing the legal standard for waiver, the court concluded Rudolfo was not aware of his community property rights or the laws regarding spousal support. In contrast, Leah knew the law in both areas, and therefore “The court also believes that Wife intentionally took advantage of Husband’s ignorance of the law.”

Amici argue a common misconception is that a woman cannot be a victim of domestic abuse if she stands up against domestic abuse. Amici reason “Therefore, Leah’s negotiation with Rudolfo over the MSA might have been her way of trying to escape or minimize future abuse, executed during the loving period of their relationship.

Her negotiation does not make her any less of a victim of Rudolfo’s ongoing attempts to influence her himself. Again, evidence that Rudolfo attempted to control Leah through abuse would tend to disprove that she unduly influenced him into executing the MSA.” For the first time on appeal, Leah echoes these sentiments, arguing “The presumption of undue influence has an illogical application when it’s wielded against the victim of domestic violence, when the power within the relationship is already *inherently imbalanced against the victim* to begin with.”<sup>4</sup>

Both amici and Leah fault the trial court for not factoring in domestic abuse into its analysis of undue influence. Leah accuses the court of refusing to hear her testimony regarding domestic abuse and finding the history of domestic violence not relevant. However, the discussions during the hearing that Leah cites as evidence for this proposition do not support her argument. The court noted Leah raised the issue of an incident of domestic violence which occurred on the same day as the signing of the first amendment. The court found Rudolfo had the right to respond. Later during the hearing, Leah sought to expand upon her testimony regarding domestic violence. The court declined to hear what it determined was “all new evidence . . . I’m not going there.”

The trial court considered Leah’s clam that it had improperly allowed Rudolfo to discuss an incident of domestic violence over her objection. The court noted Leah first raised the issue of domestic violence in her trial brief and in her testimony during the hearing. The court heard evidence concerning the incident and whether the incident was relevant to the motives for executing the agreement. Leah argued “by the very nature of domestic violence Husband was the party with the ‘power.’ ” Ultimately, the court concluded that Leah raised the issue and could not complain when the trial court allowed Rudolfo to respond.

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<sup>4</sup> Leah titles her argument “*Issue of First Impression: Applying the Presumption of Undue Influence Against a Victim of Domestic Violence is Against Public Policy.*”

We do not disagree with amici and Leah that evidence of domestic abuse may provide context to other evidence considered by the trial court in evaluating undue influence. Nothing in the case law limits what the court may consider in relation to undue influence between spouses, and evidence of domestic abuse may shed a light on the amount of control one spouse has over another. In an appropriate case, evidence of domestic violence may be the determinative factor in overcoming the presumption of undue influence. This is not that case.

We also disagree that the trial court failed to consider domestic abuse in evaluating the marital settlement agreement and first amendment. Here, both parties presented evidence of domestic abuse connected with executing the agreement. The court was aware of Leah's claims of abuse in the relationship. However, the court found other factors, including Leah's legal training and the overwhelming benefits she enjoyed under the agreements, supported a finding of undue influence which Leah failed to refute.

Finally, we consider Leah's multiplicity of arguments on appeal. In a 151-page brief, Leah raises numerous claims attacking the court's findings. Leah argues the parties were not in a confidential relationship required for a finding of undue influence; raising the issue of the presumption of undue influence deprived Leah of due process; the marital settlement agreement was not unfair; Leah rebutted the presumption of undue influence; Rudolfo was barred by estoppel, ratification, laches, fraud and unclean hands; additional child support was a benefit to the children, not Leah; and the court erred in denying Leah's motion for a new trial.

We find no merit in any of these contentions. Leah made many of these arguments in her motion for a new trial and the court rejected each of them.

As for the relationship between the parties, the court noted that section 721, subdivision (b) specifically provides that in transactions with each other, husbands and wives are subject to a good faith standard governing fiduciary relationships that imposes a duty of the highest good faith and fair dealing that is analogous to a fiduciary

relationship between business partners. Nor did raising the issue of undue influence violate Leah's right to due process. The court noted Leah cited section 721, subdivision (b) in her trial brief and Rudolfo raised the issue as an affirmative defense, putting Leah on notice.

Nor are we convinced that the court erred in concluding the marital settlement agreement and first amendment were unfair. The court carefully delineated the terms of the agreement, which overwhelmingly favored Leah. Leah failed to rebut the presumption of undue influence. The court properly rejected Leah's claim that Rudolfo was barred by fraud, unclean hands, and estoppel. According to the court, "These are not bases for a new trial under Code of Civil Procedure section 657. Rather, they are arguments that Wife, who was represented by counsel, should have raised at the time of the long-cause hearing."

Leah asserts the court "appeared to construe" the benefits to the children, child support, against her. However, the references cited by Leah show only that the court considered the inequity between the parties in providing for support and allowing Leah to relocate the children out of the country.


Finally, we cannot find the trial court erred in denying Leah's motion for a new trial. After considering Leah's numerous arguments, the court determined the agreements arose out of a confidential relationship and Leah, with her superior knowledge of the law, gained an unfair advantage. Leah failed to meet her burden of proof by a preponderance of the evidence to rebut the presumption of undue influence.

**DISPOSITION**

The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

  
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RAYE, P. J.

We concur:

  
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NICHOLSON, J.

  
\_\_\_\_\_  
MURRAY, J.

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
THIRD APPELLATE DISTRICT

MAILING LIST

Re: Chavez v. Chavez  
C080202  
San Joaquin County  
No. FL384913

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✓ Rudolfo Chavez

[REDACTED]  
[REDACTED]

✓ Leah Chavez

[REDACTED]  
[REDACTED]

Mary-Christine Sungaila

[REDACTED]  
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Natasha Breaux

[REDACTED]  
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✓ Honorable Cheryl McCann

[REDACTED]  
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