

*In re Marriage of Schleich*

This opinion travels a lengthy and convoluted path, perhaps because of the multiplicity of alleged non-disclosures, arguable sanctionable conduct on both sides, and the apparent necessity to address the disposition of numerous individual assets after an eight day trial and a 50 page Statement of Decision. It's not an easy read. Perhaps it would be prudent to select and extract a narrowed focused segment.

The core reason for the reversal of this part of the case was that the trial court veered into error when it awarded 50 or 100% of the value of an asset to wife for husband's alleged non-disclosure breach of fiduciary duty pursuant to Family Code sections 1101 (g) and (h), *in addition* to her community property interest in those assets. Awarding the community interest in certain assets twice was error because the remedy for a breach of fiduciary duty under Family Code section 1101(g) is an *alternative* to the 50% interest in community property under section 2550, not an additional share.

Another error was imposing a Family Code section 1101(h) remedy for non-disclosure of business income where such income was spent for the benefit of the community before separation and thus did not impair wife's interest in the community as of the date of separation. Violations of the duties of disclosure involving separate property, community income expended prior to separation, and loan repayments received pre-separation were not breaches of fiduciary duty because they did not impair any interest in the community estate.

Breach of fiduciary duty claims are present in most family law disputes. This case focuses our attention on the proper application of Family Code sections 1101(g) and (h) remedies, and that is the worthwhile take-away lesson.

One more twist worthy of mention. The alleged violations of disclosure could not support an award of attorney's fees under Family Code section 1101(g), because they did not amount to fiduciary breaches. However, the Court finds support for an award of sanctions under Family Code section 2107(c). One way or another, failure to disclose is going to lead to adverse consequences.

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