Filed 12/11/02

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of SCOTT NICHOLSON and ELIZABETH SPARKS.	
SCOTT R. NICHOLSON, Appellant and Cross-Respondent v. ELIZABETH SPARKS, Respondent and Cross-Appellant .	A094731, A096862, A097023 (Alameda County Super. Ct. No. 810603-6)

This is an appeal, and cross-appeal from a final judgment dividing the community property, and ordering Scott R. Nicholson to make an equalizing payment to his former wife, Elizabeth Sparks.[1]

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part I.

[1] Nicholson originally filed a notice of appeal (A094731) and Sparks filed a cross-appeal from a partial judgment on bifurcated issues, entered on February 27, 2001. The appeal in A096862, and cross-appeal A097023 are from a "Second Partial Judgment on Reserved Issues" filed on September 13, 2001. None of these were final judgments, because although each partial judgment resolved some of the issues relating to the division of property, other issues concerning the same subject matter were still pending. (See, e.g,. Fam. Code, §§ 2025, 4800; Cal. Rules of Court, rule 1269.5; *In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 403-404; *In re Marriage of Griffin* (1993) 15 Cal.App.4th 685, 689; *In re Marriage of Van Sickle* (1977) 68 Cal.App.3d 728, 736-737.)

Both parties urged the court to accept jurisdiction, arguing that the practice of the Alameda County Court to divide the hearing on property division into parts, and render a

In his appeal, Nicholson contends that that there is no substantial evidence to support the court's finding that the value of the residence it awarded to him, 120 Fairlawn, in the City of Berkeley, (hereafter Fairlawn), and the one awarded to Sparks, 416 Gravatt Drive (hereafter Gravatt), in the City of Oakland, were equal.

In her cross-appeal, Sparks contends that the court erred in finding that Nicholson should be credited, pursuant to Family Code[2] section 2640, subdivision (b), in the amount of $30,000 for separate property he used to pay down their community credit card debt which permitted them to qualify for a loan to purchase the Gravatt residence.

We shall hold that the valuation of Gravatt and Fairlawn is supported by substantial evidence, but that section 2640, subdivision (b) does not provide for reimbursement of the separate property Nicholson used to pay community credit card debt. We therefore shall remand to the trial court for recalculation of the equalizing payment it ordered Nicholson to pay.

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series of "partial judgments" should result in entry of a series of separate appealable judgments. The scope of this court's jurisdiction is defined by statute, (*In re Marriage of Griffin, supra*, 15 Cal.App.4th 685, 687) and cannot be expanded by the local calendaring practices of a particular county, or the agreement of the parties that they desire immediate review. Other established avenues exist for obtaining review of such interlocutory orders including the procedures set forth in Family Code section 2025, and Rules of Court, rule 1269.5, or, if an appeal from a final judgment would be an inadequate remedy, the parties may petition for review by writ.

The jurisdictional problem, however, was resolved when the trial court entered judgment resolving the last remaining issue relating to property division pending between the parties. The parties have stipulated that all their pending appeals be consolidated and be deemed fully briefed, and that no additional issues be raised with respect to the judgment resolving the last remaining issue of division of personal property. We therefore deem the premature notice of appeal from the partial judgment to be an appeal from the final judgment.

[2] All subsequent statutory references are to the Family Code unless otherwise indicated.

I.

Property Valuation

1. Relevant Facts

Due to the court's crowded docket, the issues relating to the value of the two residences, and who would be awarded which one, were tried in short segments over a period of months. The court explained that it would first decide who would receive which property, and then make a determination as to the value.

Floyd Hibbits, who was appointed pursuant to Evidence Code 730, prepared two appraisals. He concluded that, as of July 11, 1999, the fair market value of Gravatt was $795,000, and Fairlawn was $800,000. At the unilateral request of Sparks, who was then living at Fairlawn, Hibbits prepared a second appraisal of Fairlawn, valuing it at $625,000, (hereafter "amended Fairlawn appraisal") based upon a home inspection report which listed renovation that had been done without permits, and identified many items of deferred maintenance, or repair and code violations.

At the beginning of the trial, Nicholson objected to the admission of the amended Fairlawn appraisal because it had been prepared at the unilateral request of Sparks. Sparks therefore offered into evidence only the first two appraisals, and they were admitted without objection

Nicholson initially testified that he had no opinion as to whether the two properties did have "approximately the same fair market value," However, the court stated that "the fair time to give an opinion is when they don't know [which property] they'll get," and cautioned that if either of the parties testified that he or she had no opinion, it likely would not allow them to offer one later, after it decided who would get Gravatt or Fairlawn. Nicholson therefore testified that Gravatt had a fair market value ranging between $625,000 and $800,000, and Fairlawn's value ranged between $650,000 and $800,000. He also testified that, after he and Sparks purchased Fairlawn, they made "substantial modifications to it." All the work was "up to code," although not all jobs were permitted. He had made inquiries and determined that retroactive permits, or a consolidated permit could be obtained if proper drawings were submitted. He knew how

to prepare such drawings, and he had prepared drawings that were submitted with a permit application. He also testified that the values of the two properties were similar, but not the same. Nicholson wanted to be awarded Gravatt because Sparks was already living at Fairlawn, it would be emotionally difficult for him to live there because she also had had a boyfriend living with her, Gravatt was an easier location for his commute, and he had invested $34,000[3] improving Gravatt, for a rental or so his mother could live there too.

Sparks testified that she also wanted Gravatt because it was newer, and would be easier for her to maintain. She had no construction experience, whereas Nicholson had done many renovations, and had supervised, or himself performed much of the work on Fairlawn. Nicholson could more easily obtain the necessary permits because he was familiar with the work done, and could prepare the necessary drawings.

Roger Robinson, a licensed contractor, and owner and manager of Star Inspection Group testified that he had performed a recent home inspection of Fairlawn, and identified work that needed to be done, and permits that were necessary. He testified that the work completed was generally of good quality, and the he was criticizing only work that had not been completed.

Based upon the foregoing, the court stated on the record, on March 28, 2000, that it was going to give Fairlawn to Nicholson, and Gravatt to Sparks.

At the next trial date of May 23, 2000, Nicholson offered two "updated appraisals" on Fairlawn and Gravatt, he had obtained since the court's March 28, 2000 ruling. The court excluded them, on the ground that they were submitted too late in the trial, in violation of court orders, and local rules. It also observed that it was not necessary to update the appraisals previously submitted, because, to the extent that the passage of time had affected the value of the properties, the upward trend in the market would likely affect the properties equally. The court did permit Nicholson to introduce recent

[3] The court had imposed discovery sanctions against Nicholson precluding the admission of documentary evidence of these expenditures, except for the few he had produced, but did allow him to offer his testimony on the issue.

photographs of Fairlawn, and Gravatt.[4] Nicholson testified, based upon its current condition that Fairlawn was worth only $600,000 and that Gravatt, considering the many improvements he had made, was worth $1,050,000.

Sparks testified that the value of Fairlawn was $800,000, and Gravatt was $795,000. She also testified that the reasons why the value of the two properties was so close, despite the condition of Fairlawn included the facts that, "Fairlawn is in Berkeley and Gravatt is in Oakland. Also, Fairlawn is significantly larger. It has 3,912 sq. ft. . . . and [a] . . . double lot . . . while Gravatt has 2,669 sq. ft." [5]

In its February 27, 2001 partial judgment on reserved issues the court found, for purposes of division of property, that the fair market value of the two properties were equal, and valued them both at $800,000, and, in a statement of decision set forth its findings and reasoning.

2. Substantial Evidence Supports the Conclusion that the Two Properties Were Equal in Value

Nicholson contends that the court's finding that the Gravatt and Fairlawn properties were equal in value is not supported by substantial evidence because: (1) the court's finding is "inconsistent" with the amended Fairlawn appraisal, which revised the value of Fairlawn to be only $625,000, based upon the Star Inspection Report; (2) the court's finding that the properties were equal in value cannot be reconciled with the testimony of Sparks, and Roger Robinson, regarding all the incomplete work, deficiencies, and the permits required for the work done on Fairlawn, that would cost in excess of $100,000 to hire contractors to perform, or with the court's own finding that Nicholson left Fairlawn in "poor" condition; (3) even if the court relied upon the initial

[4] The court asked: "Are these pictures offered to show that Fairlawn is in worse shape than we even thought because -- you're the one with Fairlawn now? Nicholson answered "Exactly." After viewing the photographs the court commented: "If anything, these photographs seem to show that Fairlawn is in better shape than it looked in the earlier photos where all I saw were problems, and now I'm looking at a pretty nice house."

[5] To expedite the proceedings the parties agreed to submit direct testimony by declarations, and the court admitted Nicholson's declaration.

appraisals, assigning substantially equal values, the court's finding fails to account for the substantial improvements Nicholson had performed to Gravatt since the appraisals were made; and (4) the court itself acknowledged that the condition of Fairlawn was "poor" and "deplorable," yet applied principles of equitable estoppel, unsupported by any evidence, to award him Fairlawn at an inflated value.

It is well established that, when reviewing the record under the substantial evidence standard of review, we cannot reweigh the evidence. We must resolve all conflicts and draw all inferences in support of the judgment, and must defer to the credibility determinations of the trier of fact. (*In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 670.) Yet, virtually all of Nicholson's' arguments ask that we do the opposite.

With respect to the amended Fairlawn appraisal, preliminarily, we observe that although the record is not absolutely clear, it does not appear ever to have been admitted into evidence. Nonetheless, we need not belabor the question whether it was admitted, because, even if we assume arguendo, that it was, the court was not bound to follow the amended appraisal, or even the initial appraisals submitted to it. (See, e.g., *In re Marriage of Bergman* (1985) 168 Cal.App.3d 742, 754 [trier of fact can disregard ultimate opinions of experts, and reach independent conclusion re value]; *In re Marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1345 [trier of fact is not required to accept even unanimous expert testimony at face value, as long as it does not arbitrarily reject it].)

In addition to the two original appraisals, the court's finding is independently supported not only by Sparks' testimony that the value of the two properties was $795,000 and 800,000, (*In re Marriage of Stoll* (1998) 63 Cal.App.4th 837, 843 [owner is competent to testify to value of his or her own property]), but also by the testimony of *Nicholson* that the value of the properties was substantially the same, that the value of Fairlawn ranged between $625,000 and $800,000, and the value of Gravatt fell within a similar range The court was, of course, free to discredit Nicholson's later testimony, after he was awarded Fairlawn, to a very different estimate of value, and it clearly did so.

There also were reasons why the court could have concluded that it would not give the same weight to the amended appraisal of Fairlawn, as it would to the original appraisals. The amended appraisal assumed that all of the Star Inspection Report's suggested repairs had to be done, and would affect the market value, whereas Robinson testified that many of the suggestions were intended only to provide information, and would not necessarily affect the value or salability of the property. It is for the trier of fact to determine the weight of evidence, and this court cannot reweigh it.

We also find no "inconsistency" between the court's findings, based upon Sparks' and Robinson's testimony regarding the condition of Fairlawn, that Nicholson had left it in "poor" or "deplorable" condition, and its ultimate conclusion that the properties were of equal value. The primary significance to the court of the condition of Fairlawn, and Nicholson's role in creating the problems, was as a factor in deciding to award it to him, because he had more familiarity with the work that was done, he was responsible for many of the problems, and had the skill to fix them. The court did not, however, disregard the condition of Fairlawn in making its decision as to value. Instead, it concluded that there were other compensating factors, such as Fairlawn's superior location, size, and double lot.[6] As we have already stated, Spark's testimony as to these factors is substantial evidence, and we, in accordance with the applicable standard of review, cannot entertain arguments as to its weight, or her credibility.

The court's conclusion that the property values were equal, despite the problems with the condition of Fairlawn, was further supported by evidence that since the original appraisals were performed, there were also changes in the condition of Gravatt. Although Nicholson asserted that he had made improvements to Gravatt, the court found "many of his remodeling efforts are unpermitted and resulted in obvious building code violations," and that "portions of [Gravatt] . . . are also in unfinished and poor conditions due to [Nicholson's] piecemeal and haphazard improvements." This finding was

[6] In an order announcing it's decision the court also observed, "[i]f the two properties were in the same condition, the *Fairlawn property might even be the more valuable*."

supported by Sparks' testimony describing the problems with the work performed on Gravatt, and disputing that they added any value to the property.

Nicholson's argument that the court failed to take into account his, and his father's "uncontroverted" testimony that they had made approximately $30,000 in improvements to Gravatt, simply disregards the court's express finding that it did not find credible their testimony as to the amount expended, and the claimed increase in value as a result of the improvements.

Finally, we do not construe the court's passing reference to the concept of estoppel in its faxed minute order[7] to constitute an attempt to apply the doctrine of equitable estoppel, or any other equitable principle to justify awarding Fairlawn to Nicholson at an inflated value, without regard for its actual condition, resulting in an unequal division of property. The court, in this minute order, was not using the term "estopped" as a term of art. Instead, it appears to have been explaining one of the reasons why it discredited Nicholson's testimony regarding the value of Fairlawn. In any event, it did not repeat the reference to estoppel, in its partial judgment, or in its statement of decision, both of which contained express findings that both properties were worth $800,000. For the reasons we have already explained, that finding was based upon, among other things, substantial evidence of the *current condition* of *both* properties. Therefore, we conclude the record simply does not support Nicholson's contention that the court relied upon principles of estoppel to inflate the value of Fairlawn as if the repairs necessary to bring the house up to code, and required permits had been obtained, when neither had, in fact, been done.

[7] In pertinent part, the minute order stated: "For purposes of the division of community property, the fair market value of the homes on Gravatt and Fairlawn are found to be substantially equal as of the date of trial. If the properties were in the same condition, the Fairlawn property might even be the more valuable one. Its poor condition as of the date of trial was because respondent had not proceeded diligently to finish the work he started. He left the petitioner with this home in a deplorable condition. While this case was pending, he did nothing to improve the situation, most likely assuming that the petitioner would be stuck with this property. In light of respondent's conduct, the court finds he is estopped from claiming that the poor condition of Fairlawn made it a less valuable property."

Sparks also has filed a motion seeking sanctions against Nicholson for filing a frivolous appeal. Although Nicholson's arguments are without merit, we cannot say that they fall so far outside the range of reasonable argument as to warrant the imposition of sanctions. "As our Supreme Court stressed in *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650-651 [183 Cal.Rptr. 508, 646 P.2d 179], the power to punish attorneys for bringing frivolous appeals 'should be used most sparingly to deter only the most egregious conduct.' " (*In re Marriage of Koester* (1999) 73 Cal.App.4th 1032, 1041.)

II.

Reimbursement for Separate Property Used to Pay Down Community Credit Account

The court also ordered that Nicholson "shall be entitled to a $30,000 credit pursuant to Family Code § 2640 (b) for his traceable separate property contributions to the acquisition of the Gravatt Drive real property." In its statement of decision the court found that, during the marriage, Nicholson's mother periodically transferred money to him. Nicholson claimed these funds were loans which had to be repaid by the community, whereas Sparks asserted they were gifts. With respect to most of the transfers of funds, the court found that Nicholson failed to offer any credible evidence of the amounts transferred, or any documentation supporting his contention that they were loans. However, "[i]t was not disputed that [Nicholson's] mother transferred approximately $30,000 to [Nicholson] which was used to pay down . . . the credit card obligations to permit them to qualify for a loan to purchase the Gravatt residence. [Nicholson] claimed that this was a loan that had to be repaid. There was no writing associated with this 'loan.' Although it cannot be treated as an enforceable loan, the Court finds that it is equitable for Scott to be credited this amount as a Family Code § 2640 (b) contribution to the purchase of the Gravatt Drive residence, and he shall receive a credit in that amount in the property division."[8]

[8] Nicholson relied primarily upon the contention that his mother had made a loan that should be repaid, but also argued, as an alternative, that the funds from his mother were his separate property, and that he should be reimbursed pursuant to section 2640.

Sparks, in her cross-appeal, contends that the court erred in determining that Nicholson be reimbursed pursuant section 2640, subdivision (b) for the use of his separate property to pay community credit card debts, because the payment of credit card debts is not, under any reasonable construction, a "contribution[] to the acquisition of property" or payment for improvements within the meaning of this section.[9] Nicholson, on the other hand, contends, his payment of their debt does qualify as a contribution to the acquisition of Gravatt because, without the pay down of credit card debt, the parties could not have obtained a loan, and therefore could not have acquired the Gravatt property. We shall conclude the payment of community credit card debt is not a contribution to the acquisition of property within the meaning of section 2640, and remand to the trial court to recalculate the amount of the equalizing payment it ordered Nicholson to pay without this credit.

Subdivision (a) of section 2640 provides that "[c]ontributions to the acquisition of the property" "include *downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the*

[9] In her opening brief appellant asserted that there were no disputed issues of fact, and the issue was purely one of law, i.e., does the use of separate property to pay down community debt to qualify for home loan constitute a contribution to acquisition of property within the meaning of section 2640, and acknowledged that the court implicitly found that the $30,000 was a gift to Scott. In her reply, however, she contends that there is no substantial evidence to support the implicit finding that the $30,000 Nicholson received from his mother was his separate property, and also suggests there was insufficient evidence that these funds were used to pay down community debt in order to qualify for the loan. Raising these issues for the first time in the reply unfairly deprives Nicholson of a meaningful opportunity to respond. In any event, there was substantial evidence to support the implicit finding that the funds were a gift to Nicholson. Sparks, in her own testimony by declaration, never disputed that Nicholson's mother transferred $30,000 to him prior to the purchase of the Gravatt house, but maintained that the funds transferred were a gift, not a loan. The court, as the trier of fact, could have inferred that they were a gift to Nicholson, based upon Sparks's testimony that Nicholson periodically received money from his mother, in the form of "payments on credit card bills *for his benefit*." Sparks also acknowledged that the credit card debts were community debts. It was *undisputed* that these funds were used to pay down community debt, and therefore no tracing to a separate property source was required.

property, but do not include *payments of interest on the loan, or payments made for maintenance, insurance, or taxation* of the property." (Italics added.)

This section represents a specific legislative rejection of the general presumption that separate property used for community purposes is a gift, as it was applied in *In re Marriage of Lucas* (1980) 27 Cal.3d 808, 816. In *Lucas, supra*, the wife's separate trust fund was used to make a down payment, and to pay for improvements to a house the couple purchased together, and took title, to as joint tenants. The "court held that a separate property contribution during marriage to the purchase or improvement of a family home was [presumptively] a gift and, absent an agreement [to the contrary], there was no right to reimbursement at the time of divorce. (*In re Marriage of Fabian* (1986) 41 Cal.3d 440, 446-447 [224 Cal.Rptr. 333, 715 P.2d 253]; *Lucas, supra*, at p. 816; *See v. See, supra*, 64 Cal.2d at p. 785; *In re Marriage of Walrath, supra*, 17 Cal.4th at pp. 914-915, 918; *In re Marriage of Koester* (1999) 73 Cal.App.4th 1032, 1034 [87 Cal.Rptr.2d 76].)" (*In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1061.) The legislative history, "of former Civil Code section 4800.2 [now section 2640] reveals a legislative judgment that it would be fairer to the contributing party to allow separate property reimbursement upon dissolution." (*In re Marriage of Cochran, supra*, 87 Cal.App.4th 1050, 1061-1062 [internal quotation marks omitted], citing *In re Marriage of Walrath*, *supra*, 17 Cal.4th at p. 918.)

However, " the no-reimbursement rule of *See v. See* [(1966) 64 Cal.2d 778, 785] has been voided *only insofar as the separate property contributions are within the category of 'contributions to the acquisition of property*' as defined in Family Code section 2640." (Kirkland, Cal. Fam. Law, § 23.12, at pp. 23-32.1, italics added.)[10] Thus,

[10] There is no gift presumption when *community* property is used to reduce the principal balance of a mortgage on *separate* property, (see *In re Marriage of Moore* (1980) 28 Cal.3d 366, 371-372; *In re Marriage of Marsden* (1982) 130 Cal.App.3d 426, 436-440) and several courts have criticized the underpinnings of the gift presumption, and discarded it when community property is used to *improve* separate property. (See *In re Marriage of Allen* (2002) 96 Cal.App.4th 497, 498, 501; *In re Marriage of Wolfe* (2001) 91 Cal.App.4th 962, 967.) We have found no case, however, that rejects the

absent an agreement, the use of separate property to pay community debts, is not reimbursable, except where the payment is made post separation. (§ 2626.) In this case, the parties had not separated when Nicholson paid their credit card debt with the funds received from his mother. Therefore, absent an agreement that he would be reimbursed, which he did not even attempt to prove, his payment of community credit card debt, would not normally be reimbursable. The question, then, is whether the additional fact that the payment of these debts allowed the parties to qualify for a loan to purchase Gravatt qualifies this otherwise non-reimbursable payment as a "contribution to the acquisition of property" within the meaning of section 2640.

Nicholson argues, in reliance upon the decision in *In re Marriage of Cochran, supra,* 87 Cal.App.4th 1050, that if section 2640 does not expressly *exclude* payment of credit card debts from the category of reimbursable "contributions to the acquisition of property," and payment of the credit card debt was necessary in order to qualify for the loan, which in turn facilitated the purchase of Gravatt, then the payment contributed to the acquisition of Gravatt, and should be reimbursable. The decision in *Cochran, supra,* is much narrower, however, than Nicholson suggests. In *Cochran, supra*, the husband sought reimbursement for, among other things, school fees that were a condition of obtaining a building permit to build a family residence. The court found that school fees were not a tax, and therefore were not specifically excluded from reimbursement. It further concluded that, because the payment of the fees was required by the local planning agency *as condition of the building permit*, the payment was one of the costs of making the improvement, and therefore reimbursable, as a " 'payment[] for improvements,' " one of the specifically included items in the category of contributions to acquisition of property. (*Id.* at pp. 1061-1062.)

The obligation to pay the school fees, in *Cochran, supra*, was includable in the cost of improving the property because the payment was an express condition of the

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application of the gift presumption to the payment of community debts with separate property, during marriage, and prior to separation.

building permit, and the couple would not have had any obligation to pay the fees if they had not constructed a home. By contrast, here, the obligation to pay the consumer credit card debts preexisted the acquisition of Gravatt, and they were obligated to pay these debts whether or not they acquired Gravatt. It was necessary to pay the credit card debts down, prior to purchasing Gravatt only because the parties had accumulated too much debt in relation to their income to qualify to take on more debt. Although the payment of the credit card debts facilitated qualification for a loan, the payments did not "contribute to acquisition of the property." Rather, the payment simply reduced preexisting consumer debt unrelated to acquisition of the property.

Although the forms of reimbursable contributions listed in subdivision (a) of section 2640 are not exclusive, it does not follow, that *any* type of expenditure which simply facilitates property acquisition, is reimbursable under subdivision (b) of section 2640. A comparison of the list of items included in, and excluded from, the category of "[c]ontributions to the acquisition of the property" provides us interpretative guidance by defining the parameters of reimbursable separate property contributions. The common thread linking the *included* items, i.e., downpayments, payments for improvements, and payments to reduce the principal of a loan used to purchase the property or make improvements to it, is that each of these types of payments either directly contribute to equity acquisition, or are expenses or costs of making improvements which may increase equity, assuming that the improvement actually results in an increase in property value. By contrast, payments of "interest on the loan, or payments made for maintenance, insurance, or taxation," which are *specifically excluded*, do not contribute to equity acquisition, despite the fact that they are expenses necessary to retain ownership, or preserve, and protect the owner's interest. Thus, not all expenses associated with acquisition or ownership of property are reimbursable, and the types of separate property payments that are reimbursable under this section are those which contribute to the acquisition of equity in the property either directly, or indirectly by paying the cost of improvements.

Applying these parameters to the payments for which Nicholson seeks reimbursement we conclude that Nicholson's use of separate property to pay down community credit card debts does not qualify as a "[c]ontribution[] to the acquisition of" Gravatt. His separate property funds were not used to acquire or increase the equity in Gravatt. Instead, the funds were used to pay consumer credit card debts *before* the parties acquired Gravatt. The debts paid bore *no relationship at all to the Gravatt property,* and the obligation to pay them existed regardless of whether they acquired the Gravatt property. Paying down the debts before purchasing Gravatt reduced their consumer debt to income ratio, and allowed the parties to qualify for a loan, but made no contribution to the amount of equity they acquired. Nicholson did not even attempt to establish that the credit card debts he paid were for expenses relating to any improvement of the Gravatt property.[11] In short, his separate property funds were not used to *acquire Gravatt*, but rather to pay off community debts that *preexisted* the acquisition of Gravatt.

We conclude that the payment of community debts prior to the acquisition of property, and unrelated to any improvement of the property does not, under any reasonable construction, convert the pre-separation payment of community debts into a reimbursable contribution of separate property to the acquisition or improvement of community property pursuant to section 2640. If the Legislature intended such a result it would have had to enact a much broader statute providing for reimbursement of separate

[11] Nicholson also testified that the credit card debts were for costs of improvements made to *Fairlawn*. If he had been able to prove this claim to the satisfaction of the court, then the payments clearly would have been reimbursable pursuant to section 2640. In light of his inconsistent testimony, and failure to produce documents to support his claim, we assume that the court must have concluded he failed to prove this alternative ground for reimbursement, or it would not have adopted the far more problematic legal theory that the payments were a contribution to the acquisition of *Gravatt.* After initially testifying that all the funds from his mother were used to pay credit card debts incurred for improvements to Fairlawn, Nicholson later acknowledged that $10,000 of the funds provided by his mother was actually used to pay off a car loan. Sparks also produced a credit card statement for the month preceding the pay down of the account, which Nicholson acknowledged primarily reflected expenses for a Hawaiian vacation, and Nicholson was able to identify only one possible construction related expense on it.

property used to pay community debts. It did not do so. Instead, in enacting section 2640 it limited reimbursement to the use of separate property for "acquisition" or "improvement" of community property.

Our conclusion that Nicholson was not entitled to a credit pursuant to section 2640 for the $30,000 of his separate property used to pay down the community debts prior the purchase of Gravatt, will require recalculation of the equalizing payment the court ordered Nicholson to pay in its second partial judgment on reserved issues, filed on September 13, 2001, and we shall remand the matter for that purpose.

CONCLUSION

The order crediting Nicholson with $30,000 pursuant to Family Code section 2640 is vacated, and the matter is remanded for the purpose of recalculating the equalizing payment, without this credit. In all other respects, the judgment is affirmed. Costs are awarded to Sparks.

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Stein, J.

We concur:

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Marchiano, P.J.

_____
Margulies, J.

Trial Court:	Superior Court Alameda County
Trial Judge:	Honorable Stephen Dombrink
Attorney for Appellant and Cross-Respondent:	Robert L. Walker
Attorney for Respondent and Cross-Appellant:	Garrett C. Dailey