

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of JULIE R. GREEN and TIMOTHY P. GREEN.	
JULIE R. GREEN, Appellant,	A129436 (Contra Costa County Super. Ct. No. D0801292)
v.	
TIMOTHY P. GREEN, Respondent.	ORDER DENYING PETITION FOR REHEARING AND MODIFYING OPINION [NO CHANGE IN JUDGMENT]

BY THE COURT

The opinion filed May 16, 2012, is modified as follows:

1. On page 2, delete the fourth and fifth paragraphs and replace with:

Julie filed a petition for dissolution of marriage in March 2008. During dissolution proceedings, a dispute arose over whether to characterize Timothy's military service credit as separate or community property. The trial court appointed an expert for the purpose of drafting proposed orders to divide the community property interests in the parties' pension plans. According to a brief filed by Timothy in connection with the dispute over his military service credit, the expert proposed treating 34.44 percent of the service credit as a community property asset, representing the percentage of payments toward the military service credit made with community funds. [¶] The parties could not agree on division of the military service credit, and submitted briefs on the issue to the trial court. Julie sought to continue to pay half of the cost of future installment payments, and requested that half of the military service credit be placed into a separate account for her benefit through CalPERS. Timothy argued that because his right to purchase military service credit arose prior to the parties' marriage, all four years of credit were his separate property. Timothy acknowledged,

however, that community funds used to pay for the purchase before the parties' separation in October 2007 were community property.

2. On page 9, replace the first paragraph with:

Even after Timothy started working for a CalPERS participant, and thus became eligible to purchase military service credit based on his premarital service in the military, his right to such credit amounted to no more than an "expectancy," which is not a property right divisible upon dissolution of marriage. (*Brown, supra*, 15 Cal.3d at pp. 844-845.) It is undisputed that, when Timothy began working for the Dougherty Regional Fire Authority in 1989, his employer was a CalPERS agency that provided its employees the option to purchase military service credit. However, section 21024, subdivision (e) specifically provides that the statute "shall apply to a member *only* if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section." (Italics added.) In other words, a member's right to purchase credit is dependent on his or her employer's election to be subject to section 21024. Presumably the employer could elect at some point to no longer be subject to section 21024, in which case employees who had served in the military would have no right to purchase credit based on that service, let alone a property interest in CalPERS credit based on that service.

The modification does not change the appellate judgment. (Cal. Rules of Court, rule 8.264(c)(2).)

Respondent's petition for rehearing is denied.

P.J.

Trial Court: Contra Costa County Superior Court

Trial Judge: Honorable Charles B. Burch

Counsel for Appellant: April Rose Sommer

Counsel for Respondent: Tarkington, O'Neill, Barrack & Chong, Robert A. Roth

Counsel for Amicus Curiae Northern California Chapter of the American Academy of Matrimonial Lawyers, upon the request of the First District Court of Appeal Whiting, Fallon, Ross & Abel, Ann Fallon; Office of Barbara A. DiFranza, Barbara DiFranza,