

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Estate of
ZACHARY KARNAZES.

ELIZABETH KARNAZES,
Petitioner and Appellant,

v.

ZACHARY KARNAZES,
Objector and Respondent.

A131920

(San Mateo County
Super. Ct. No. PRO120540)

Elizabeth Karnazes (appellant) appeals from a judgment denying her petition for a conservatorship over her son Zachary Karnazes’s (respondent) estate. She contends: (1) the court erred in denying her request for a continuance of the hearing on the petition; and (2) her attorney engaged in “positive misconduct,” such that appellant “should be relieved of the consequences of [her] attorney[’s]” actions. We reject the contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On October 14, 2010, appellant filed a petition for appointment of a conservatorship of the estate of respondent on the ground that he suffers from various disorders and was in need of assistance in managing his finances, among other things. The court appointed a court investigator, and a hearing on the petition was scheduled for December 1, 2010. On November 23, 2010, a written request was made to the court to

“continue the hearing . . . currently scheduled for December 1 to March 4”¹ The hearing was rescheduled for March 4, 2011. On February 24, 2011, respondent filed objections to the petition, declaring, among other things, that he was “not remotely a candidate for conservatorship of the estate” because he was a “bright, articulate 24 year old who ha[d] lived independently for several years” and had “manage[d] his finances and . . . secured public benefits to sustain him during his physical disability.” He declared that appellant, from whom he was estranged due to financial and other issues that had arisen between them, had filed the petition “simply . . . so that she [could] exercise control over him.”²

Respondent and his attorney appeared at the March 4, 2011 hearing. Appellant did not appear personally but her attorney appeared on her behalf. The court raised several concerns about the petition, including the fact that the medical examination on which it was based was “stale” and that a “new declaration on file from [another] doctor . . . [was] quite to the contrary.” Appellant’s attorney requested an “in chambers” meeting to explore settlement possibilities, or, in the alternative, a continuance. He further stated, “My client believes there [are] numerous false statements made to the court investigator, which could have an impact upon [the court’s] view of the matter.” Respondent’s attorney objected to a continuance, stating that a continuance “would not be productive” and that “any inaccuracies in the investigator’s report [were] irrelevant to

¹ This request for a continuance was made by an individual named Suzanne Staples. It is unclear from the record who this is.

² According to respondent, appellant, who is an attorney, represented him in several personal injury actions when he was a minor and obtained settlements on his behalf. When appellant refused to release the settlement funds to him despite numerous requests, respondent filed a State Bar complaint against her. Respondent believed appellant had filed the conservatorship petition “in retaliation” and in order to “stay the Bar investigation pending the resolution of the conservatorship proceeding, so that she could continue to wrongfully retain [his] settlement funds.” On appeal, appellant denies these claims and states she “objects to the . . . deceitful and misleading factual contentions” that have been made in order to “portray [her] as a vengeful, controlling villain, who refused to release [respondent’s] settlement funds and refused to supply proof that said funds were in [her] attorney-client trust account.”

the matter at hand, which [was] that [respondent] . . . [did] not meet the legal standards for a conservatorship.” Appellant’s attorney responded that his client believed a conservatorship was necessary because respondent was incapable of handling his finances properly. The court asked respondent how he was doing, and respondent replied he was “doing reasonably well, considering the circumstances.” Respondent elaborated further about his status and the reasons he believed his mother was seeking a conservatorship over his estate.

The court stated, “many aspects of this [petition] are disturbing to the court. I agree we need closure, and I intend to provide it today.” The court denied the request for a continuance, stating, “this needs to be resolved today.” As to the merits, the court stated it had “no doubt that [respondent] does not meet the legal standards for a conservatorship” and that the evidence, which “shows that he has capacity to make informed decisions in his own best interests,” was “certainly” insufficient to “meet the standard of clear and convincing evidence which is required by the court to make a binding determination.” The court denied the petition.

On March 15, 2011, appellant filed a “notice of motion and motion for reconsideration and review” on the grounds that she would “suffer irreparable harm if [the order] . . . in this matter remains,” “there are new or different facts, circumstances, or laws unknown to the court on the date of hearing in this matter,” and “good cause exists” The record on appeal does not contain any other documents related to the motion for reconsideration, or an indication as to how the court ruled on the motion. However, a minute order from a July 13, 2011 hearing on the motion for reconsideration shows the court denied the motion.³

³ We hereby take judicial notice of the July 13, 2011 minute order. (See Evid. Code, §§ 459, 452, subd. (d)(1) [we may take judicial notice of records of any court of this state].) We also grant respondent’s request to augment the record with the July 13, 2011 minute order, and with the confidential capacity declaration he filed in opposition to the petition, which appears to have been inadvertently left out of the record. (See Calif. Rules of Court, rule 8.155(a)(1)(A); *People v. Brooks* (1980) 26 Cal.3d 471, 484 [rule permitting augmentation is to be liberally construed].)

DISCUSSION

Continuance

Appellant contends the judgment must be reversed because the court erred in denying her request for a continuance. For the first time on appeal, she asserts she had a right to a mandatory continuance under a local rule of court, which provides: “The attorney of record, or petitioner in pro per, will be allowed to continue conservatorship and guardianship matters twice” (Super. Ct. San Mateo County, Local. Rules, rule 4.1.) She also sets forth a number of reasons—which she did not present below—as to why she believes there was good cause for a continuance. We need not, and therefore will not, decide whether the local rule created a mandatory right to a continuance, or whether there was good cause for a continuance, because in any event, appellant failed to show she was prejudiced.

Trial courts generally have broad discretion in deciding whether to grant a request for a continuance. (*Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395.) Although some statutes make continuances mandatory and, therefore, divest the trial court of its usually broad discretion, (see, e.g., *Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 864 [mandatory continuance under Fam. Code, § 243]), the denial of a request for a continuance—whether mandatory or discretionary—results in reversible error only when the denial prejudices a party. (*In re Marriage of Johnson* (1982) 134 Cal.App.3d 148, 155, superseded by statute on other grounds as stated in *In re Marriage of Braud* (1996) 45 Cal .App.4th 797, 811, fn. 14.) There is no presumption of prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.) Rather, the burden to demonstrate prejudice is on the appellant. (*Arnett v. Nall* (1921) 51 Cal.App. 194, 195.)

We see nothing to suggest there was a miscarriage of justice in this case. In explaining why there was good cause for a continuance, appellant points out she was unavailable to personally appear at the hearing due to a scheduling conflict, and suggests that if she had been there, she would have presented evidence to show she had acted in respondent’s best interests. For example, she states, “[Appellant] will seek to introduce evidence in this matter that proves [respondent’s attorney] knew [appellant] had made

multiple efforts to meet with [respondent] . . . to establish an appropriate method of releasing the settlement proceeds to [respondent]” Whether appellant breached her fiduciary duty to respondent as his attorney, however, was irrelevant to the court’s inquiry of whether respondent had the capacity to handle his finances, i.e., whether a conservatorship was necessary. Appellant also suggests there was a miscarriage of justice because she had “no time to respond and object to the [court investigator’s report].” However, she has failed to provide us with a copy of the report and does not indicate which statements she would have challenged, or what impact any inaccuracies would have had on the court’s finding that a conservatorship was not necessary. Finally, she intimates that she would have called witnesses if the matter had been continued, stating, “In justifiable reliance [on] the advice given to her by her attorney, . . . [appellant] also advised her witnesses that the hearing would be continued to another date and time.” However, she does not explain what any of the witnesses might have said that would have resulted in a different outcome. Appellant has failed to meet her burden of showing prejudice.

Attorney misconduct

Appellant contends her attorney engaged in “positive misconduct,” such that appellant “should be relieved of the consequences of [her] attorney[’s]” actions. Without citation to the record, and for the first time on appeal, she sets forth facts she believes show that her attorney engaged in egregious misconduct. Even assuming, without deciding, that she has preserved this issue for appeal, we conclude the contention is without merit.

Citing *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 898, for the proposition that an attorney’s “neglect . . . of [an] extreme degree amounting to positive misconduct . . . should not be imputed to the client,” appellant argues the judgment must be reversed because her attorney “effectively abandoned” her by, among other things, “failing to inform the court that [she] was entitled to a mandatory continuance” and “failing to inform the court that [appellant] could not attend the hearing due to a conflict which mandated her appearance in another court on another matter . . . at the same time.”

The record shows, however, that appellant's attorney appeared at the hearing on her behalf and argued for either a chambers conference or a continuance, informed the court that there were inaccuracies in the court investigator's report, and asserted that a conservatorship was necessary because respondent was incapable of handling his finances properly. Although he may not have raised all the arguments and facts appellant wished for him to raise, nothing in the record supports any inference that counsel abandoned her or otherwise failed to represent her interests in a way that would have constituted misconduct.

Moreover, appellant has failed to show she was prejudiced in any way. She has not presented any facts to support a conclusion that, but for her attorney's actions, she would have obtained a more favorable result. (See Cal. Const., art. VI, § 13 [judgment will not be reversed absent a showing of prejudice]; Code Civ. Proc., § 475 [same].)

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

McGuinness, P.J.

We concur:

Siggins, J.

Jenkins, J.