

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 FOUR

Estate of JOSEPHINE T. CASTRILLO,  
Deceased.

MAY A. CASTRILLO, as Administrator,  
etc.,

Petitioner and Respondent,

v.

JULIO CASTRILLO et al.,

Objectors and Appellants;

HERB THOMAS, as Trustee, etc.,

Claimant and Respondent.

A133446

(Alameda County  
Super. Ct. No. RP08419764)

**I.**

**INTRODUCTION**

Julio Castrillo (Julio) and his attorney, Thomas V. Roland (Roland) (collectively, appellants) , appeal from an order of final distribution (Order) relating to the Estate of Josephine T. Castrillo (the Estate). Appellants contend that in issuing the Order, the probate court failed to include payment to Roland for his legal representation of Julio in connection with his mother’s estate. They claim there was no support in the record for the court’s finding that there was no assignment providing for payment of attorney fees and costs to Roland out of Julio’s distributive share in the estate.

We agree, and vacate that portion of the Order granting Julio a distribution from the estate, with directions that the probate court reconsider the matter of Roland's assignment for attorney fees, before ordering such distribution. In all other respects, we affirm the Order.

## II.

### PROCEDURAL AND FACTUAL BACKGROUNDS

The Estate was admitted to probate with the filing of letters of administration in Alameda County Superior Court on November 12, 2008. The petition was filed by respondent May A. Castrillo,<sup>1</sup> daughter of the decedent, Josephine T. Castrillo, naming May and her sisters Linda and Josephine, and her brothers Edward and Julio, as Josephine's survivors and heirs. May was appointed administrator by order dated July 13, 2009.

In September 2011, an accounting report and petition for final distribution (the petition) was filed by May through her attorney, Matthew J. Duncan (Duncan). The petition noted that May's sister Josephine was represented by attorney W. Lance Russum (Russum). Because Josephine died intestate, May asked that each of the five siblings receive 20 percent of the available assets. It was noted that Julio's portion should be distributed to a special needs trust set up on his behalf on December 6, 2010, which was being administrated by Herb Thomas as trustee.

As to the attorneys involved, the petition requested the court to order further payment of \$11,429.66, to Russum from Josephine's share, pursuant to an "Assignment of Partial Interest in Estate and Declaration Pursuant to Probate Code section 11604.5."<sup>2</sup> (Full capitalization omitted.) It was also proposed that the Estate's attorney, Duncan, receive \$16,100 for his work representing the Estate.

---

<sup>1</sup> Since most of the persons referred to in this opinion have the last name of Castrillo, we refer to each by his or her first name to avoid confusion. No disrespect is intended by such usage.

<sup>2</sup> Earlier, a preliminary distribution was made to Russum pursuant to the assignment in the amount of \$15,769.15, leaving a remaining balance due Russum of \$11,429.66.

As to Julio, the report noted that a partial distribution had been made to his special needs trust in the amount of \$46,095.06. The petition requested that Julio receive an additional \$6,696, for a total distribution of \$52,791.06.

On October 4, 2011, Roland filed a “Declaration of Attorney for Julio Castrillo, Agreement of Attorney and Client, and Request That Court Order Payment of Attorney Fees and Costs From Client’s Share of Distribution.” (Full capitalization omitted.) In his declaration, Roland stated that his customary hourly fee was \$400, and that he had performed legal services for Julio as enumerated in the document totaling 32 hours. Therefore, Roland requested a total of \$12,800 for attorney fees. In addition, Roland stated that he had incurred costs in connection with that representation totaling \$1,083.50, which sums together he sought to be paid out of Julio’s distribution.

The declaration was accompanied by a copy of an “Attorney-Client Retainer Agreement” (Agreement), which included an assignment from Julio to Roland of a partial interest in the Estate “as may be required to pay th[e]se obligations.” The Agreement was signed on March 13, 2009, by Pauline Castrillo (Pauline), as attorney-in-fact for Julio. Attached to the Agreement was a “Uniform Statutory Form Power of Attorney” giving Pauline the power to act for Julio. The power of attorney was signed by Julio, whose signature was notarized.<sup>3</sup>

The matter was assigned to an Alameda County Superior Court probate examiner who examined the report and attached schedules, and submitted a final distribution check sheet to the court. Under “Court to Review,” the examiner noted three items for the court to consider: (1) a proposed reduction in the distribution to Josephine; (2) payment to Russum of unpaid attorney fees in the amount of \$11,429.66; and (3) payment of \$12,800 in attorney fees and \$1,083.50 in costs to Roland for his representation of Julio.

The matter was heard on October 11, 2011. That day, a handwritten declaration was filed by attorney Barbara D. Hannon (Hannon) of Duncan’s law office, counsel for

---

<sup>3</sup> Neither respondent contend that Julio lacked the capacity to execute the power of attorney or that there is any facial invalidity to the Agreement and the assignment contained therein.

May, responding to the examiner's report. In it, Hannon recommended certain corrections. As to Roland's request for fees and costs, Hannon noted that "[t]he amount claimed by Attorney Roland is \$12,800 fees and \$1,083.50 of costs, is submitted to the court. It would reduce distributive share to Julio Castrillo to \$33,211.56, payable to Trustee Herb Thomas."

Appearing at the "calendar department" hearing on October 11, 2011, before Judge Sandra K. Bean were Hannon, Josephine, Thomas, and Linda. Roland did not appear. Much of the hearing was taken up with the matter of a proposed reduction in Josephine's distributive share. Near the end of the relatively short hearing, the following colloquy took place:

"MS. HANNON: Your Honor, on the rest of the order—

"THE COURT: Do you want to fix it?

"MS. HANNON: Then we had the two issues of Mr. Roland's fees and Mr. Russum's fees.

"THE COURT: Mr. Roland's fees, there was no assignment.

"MS. LINDA CASTRILLO: That's right.

"THE COURT: So he needs to pursue whatever remedies but, Mr. Russum, there was an assignment."

".....

"THE COURT: [Russum] has an assignment for a certain amount. Whatever the assignment is, Mr. Russum gets by, by law. If he has an assignment.

".....

"THE COURT: Well, [Russum] has an assignment against the estate so when the estate is distributed—

"MS. CASTRILLO: Right.

"THE COURT: —if there is an assignment that goes directly to the person who has that document filed with the court."

The court then ordered that \$6,150.50 be paid to Russum from Josephine's distributive share. Roland received nothing in the final distribution. Appellants filed their notice of appeal three days later.

### III. DISCUSSION

One method by which an attorney can secure the payment of fees and expenses from a client in probate matters is to secure payment from the distributive share of an heir in probate by way of assignment. Assignments of interests in probated estates are governed by Probate Code section 11604,<sup>4</sup> which provides in relevant part:

“(a) This section applies where distribution is to be made to any of the following persons:

“(1) The transferee of a beneficiary.

“(2) Any person other than a beneficiary under an agreement, request, or instructions of a beneficiary or the attorney in fact of a beneficiary.

“(b) The court on its own motion, or on motion of the personal representative or other interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.”

The statute also empowers the probate court to refuse to order distribution if the court finds either that:

“(1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable.

“(2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence.” (§ 11604, subs. (c)(1), (2).)

The purpose of the statute is to provide for judicial supervision of proportional assignments given by beneficiaries to so-called “heir hunters.” (*Estate of Wright* (2001)

---

<sup>4</sup> All further undesignated statutory references are to the Probate Code.

90 Cal.App.4th 228; *Estate of Lund* (1944) 65 Cal.App.2d 151.)<sup>5</sup> “[A]lthough the original purpose of the section was protection against heir hunters, the section is not limited to that class only. It has been applied to assignees and transferees generally. [Citation.]” (*Estate of Peterson* (1968) 259 Cal.App.2d 492, 506.)

A lien assignment against a distributive share of a probated estate can be enforced under section 11604. (*Estate of Kerr* (1966) 63 Cal.2d 875.) It is improper for a probate court to refuse to honor a valid assignment. (*Wilkenson v. Linnecke* (1967) 251 Cal.App.2d 291, 295.)

Rulings on motions under section 11604 are generally reviewed under the substantial evidence standard. (*Estate of Wright, supra*, 90 Cal.App.4th at p. 238.) However, whether a legal basis exists for an attorney fee award presents a question of law that is reviewed de novo. (*Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 677.)

There is no question that Roland attached the fee agreement he entered into with Julio to his declaration which was filed with the probate court. This fee agreement included an assignment by which Roland could seek the payment of fees from Julio’s distributive share of the estate. No party opposed this request, or suggested that the assignment was invalid or unenforceable.

In light of these factors, the probate court in this instance appears to have simply overlooked Roland’s assignment when it concluded that “there was no assignment.” No explanation was given for the refusal to grant the requested fees, but the blanket statement that “there was no assignment,” rather than there was no “valid” assignment or no “enforceable” assignment, suggests oversight. This could have easily occurred in a busy probate calendar department. Moreover, Roland’s s declaration was captioned “Declaration of Attorney for Julio Castrillo, Agreement of Attorney and Client, and Request That Court Order Payment of Attorney Fees and Costs From Client’s Share of

---

<sup>5</sup> A “heir hunter” is one who locates missing or lost heirs in return for a percentage of that heir’s inheritance. (*Estate of Wright, supra*, 90 Cal.App.4th at p. 231.)

Distribution.” (Full capitalization omitted.) No mention is made of an assignment in the caption or the body of his declaration. Of course, Roland was not present at the hearing to clarify the issue or to call the court’s attention to the fact that he did have an uncontested assignment securing his interest in attorney fees and costs.

While the apparent oversight is understandable, we nevertheless conclude that it was error not to award Roland the requested fees and costs from Julio’s distributive share of the Estate. Appellants request that we remand the matter to the probate court to enable that court to “be free to take a fresh look at the case without unnecessary restrictions.” We agree. In this way the probate court can not only consider events occurring since its October 13, 2011 Order, but the court will also have an opportunity to clarify if it, in fact, perceived a legal impediment preventing the enforcement of Roland’s fee agreement and assignment.

**IV.**  
**DISPOSITION**

We hereby vacate that portion of the Order granting Julio a distribution from the Estate, with directions that the probate court reconsider the matter of Roland’s assignment for attorney fees, before ordering such distribution. In all other respects, we affirm the Order. All sides to bear their own costs on appeal.

RUVOLO, P. J.

We concur:

REARDON, J.

SEPULVEDA, J.\*

---

\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.