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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Estate of JEAN P. HAYES, Deceased.	
RICHARD J. WALL, as Executor Petitioner and Appellant.	A133488 (City and County of San Francisco Super. Ct. No. PES11294717)

Appellant Richard Wall, executor of the estate of Jean Hayes ("decedent"), appeals from an order denying probate of the estate in the San Francisco Superior Court. At the time of her death, decedent was domiciled in Washington, D.C. but owned personal property found in San Francisco. The court denied probate because decedent did not leave property in California, apparently focusing on the absence of real property owned by decedent in this state. We disagree with the court's legal conclusion that the term "property" as used in Probate Code section 7052 refers to real, but not personal, property.[1] Accordingly, we reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

Decedent moved from San Francisco to Washington, D.C. approximately two years ago. She had lived in California for over 40 years, and moved to be closer to her children due to her failing health. At the time of her death, decedent had an interest in a

[1] All further statutory references are to the Probate Code unless otherwise indicated.

California limited partnership, and a number of uncashed checks and savings bonds located in San Francisco.

Decedent died on March 31, 2011. Appellant filed decedent's will along with a petition for probate and letters testamentary with the San Francisco Superior Court. Appellant filed a notice of petition to administer decedent's estate shortly thereafter. When it heard the petition for administration, the court found decedent was a nondomiciliary of California who did not leave property in this state. The court served notice to appellant denying the petition. Appellant timely appealed.

DISCUSSION

The issue on appeal is whether the court erred when it denied appellant's petition to probate of decedent's estate in the San Francisco Superior Court. Resolution of the issue turns on statutory construction.

The construction of a statute and its applicability to a given situation is a matter of law to be determined by the court. (*Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212.) We review such matters de novo. (*Ibid*.) The de novo standard of review also applies to mixed questions of law and fact where the legal issue predominates.[2] (*Ibid*.)

We infer from the limited record that the court denied probate of decedent's estate because no real property belonging to decedent was located in San Francisco. The court recognized that the estate consisted solely of personal property. However, in denying probate the court found that decedent did not leave property in California, despite appellant's written declaration and statement at the hearing to the contrary. The court began the hearing on the petition by stating, "decedent died a resident of Maryland with no real property in the State of California. So, why should the petition have been filed here?"[3] The court's denial of appellant's petition to probate the estate based solely on

[2] Applying a clearly erroneous standard to the court's factual determinations under the mixed question of fact and law would not change our conclusion.

[3] Decedent's death certificate indicates that her residence at time of death was Washington, D.C.

the absence of real property in California was contrary to the directives of section 7050 et seq.

Section 7050 et seq. govern jurisdiction and venue for administration of estates. Appellant initially cited section 7052 as the proper basis for venue in the San Francisco Superior Court. Section 7052, subsection (b) reads in part, "if the nondomiciliary decedent did not die in [California], [the proper county for the administration of the decedent's estate is] any county in which property of the nondomiciliary decedent is located, regardless of where the nondomiciliary decedent died. If property of the nondomiciliary decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the court in that county has jurisdiction of the administration of the estate."

Section 7052 is controlling. Any county where property of a nondomiciliary decedent is located is a proper one for administration of an estate. The definition of "property" includes both real and personal property. (§ 62.) When section 7052 is read in conjunction with the definition of "property" under section 62, it is unambiguous. Under the plain language of section 7052, any county where real or personal property of a nondomiciliary is located is a proper one for administration of the decedent's estate.

There are no facts rebutting appellant's declaration that decedent left personal property in California in the form of uncashed checks, savings bonds, and an interest in a limited partnership. Even though decedent was a nondomiciliary of California at the time of her death, the superior court was required to apply section 7052 and admit decedent's will for probate.

DISPOSITION

The judgment of the superior court is reversed. This matter is remanded to the superior court with instructions to grant the petition for probate of will and for letters testamentary.

_____
Siggins, J.

We concur:

_____
McGuiness, P.J.

_____
Pollak, J.