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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

Conservatorship of the Person and Estate of
WONG SHOU CHEN.

DEBRA J. DOLCH et al., as
Coconservators, etc.,
Petitioners and Respondents,

v.

JAMES CHEN,
Objector and Appellant.

A134510

(San Francisco City & County
Super. Ct. No. PCN-05-287654)

Health and Safety Code section 7100 authorizes certain persons, most notably the next of kin, to control the disposition of the remains of a decedent unless the decedent leaves written instructions to the contrary that comply with Health and Safety Code section 7100.1.¹ In this case, the conservator, respondent Debra J. Dolch, petitioned the probate court for instructions as to who would be authorized to control the disposition of the remains of the conservatee, Madame Wong Shou Chen. The conservatee's daughter, respondent Maria Fang, claimed authorization as next of kin. (§ 7100, subd. (a)(3).) The conservatee's stepgrandson, appellant James Chen, claimed authorization under documents purportedly in compliance with section 7100.1. The probate court found the

¹ Subsequent statutory citations are to the Health and Safety Code unless otherwise indicated.

documents did not comply with the statute and ruled in favor of Maria Fang. Chen contends the ruling was in error. We agree with the probate court and affirm.

I. PROCEDURAL BACKGROUND & FACTS

Madame Wong Shou Chen (Wong), born March 13, 1917, is now 95 years old and in poor health. As noted, respondent Maria Fang (Fang) is Wong's daughter.² Wong's deceased husband, Zao Man Chen (Zao), had a son, Robert Chen (Robert) from a previous marriage. Robert was thus Wong's stepson. Robert died in 2003. Appellant James Chen (Chen) is Robert's son, making him Wong's stepgrandson.

As we noted in a prior opinion, quoting a court-appointed investigator, "Fang and Chen 'have a well-known and long-standing animosity and distrust of each other.' Fang and Chen accuse each other of malfeasance in connection with Wong's assets, which are estimated to be over \$50 million." (*Dolch v. Fang* (Nov. 30, 2007, A114680) [nonpub. opn.] p. 2.)

Wong had lived in Hong Kong for over 50 years. Her deceased husband, Zao, is buried there. But in May 2005, Fang brought Wong to California and initiated conservatorship proceedings. Since that time, Wong has lived with Fang and Fang's husband, Joseph, in a luxury condominium in San Francisco.

Fang petitioned to be conservator of Wong's person and estate. She supported her petition with medical reports concluding Wong, then 87, suffered from Alzheimer's-type dementia. Chen also petitioned to be conservator of Wong's person and estate.

Ultimately, in February 2006, the probate court appointed Dolch, a professional conservator, as permanent conservator of Wong's person and estate. In May 2006, the

² There is some question whether Fang is Wong's natural or adopted daughter. A document in evidence below, and signed by Wong, states Fang is adopted. But Fang testified at the hearing on Dolch's petition that no family member ever told her she was adopted. The question is academic, since Chen's counsel conceded the mother-daughter relationship at the hearing: "No one is contesting parentage here in this proceeding. . . . [F]or purposes of this proceeding, no one is contesting that Maria Fang has that relationship [of daughter to Wong]." This concession is repeated in Chen's opening brief.

court ordered that Wong be returned to Hong Kong. In the nonpublished opinion cited above, we affirmed the order. But Wong became too ill to travel and remains living with Fang and her husband.

On December 10, 2010, Dolch petitioned the probate court for instructions regarding who had authority to control the disposition of Wong's remains upon her death. Dolch invoked sections 7100 and 7100.1, and specifically asked the court to rule whether the written instructions proffered by Chen satisfied the latter statute and gave him authority to control the disposition of Wong's remains.

Fang responded to the petition, claiming authority under section 7100 as next of kin and arguing the written instructions were insufficient to comply with section 7100.1. Chen also responded, claiming authority under four documents, which we now describe. The documents were attached to a declaration of Chen and were admitted into evidence at the hearing below as Exhibits 1, 2, 3 and 5.

The Exhibits are two sets of two documents each, one document in each set signed by Wong and the other in each set signed by Robert. Chen attested to the validity of the signatures of both Wong and Robert. The first set of two documents was executed in 1991 and the second set in 1992, all in Hong Kong. All four are witnessed, three by Hong Kong solicitors. All four are entirely in English, with the exception of Chinese characters that follow, and appear to be Chinese translations of proper names.

Exhibit 1 is dated October 30, 1991. It reads as follows:

"I, WONG SHOU CHEN . . . of La Salle Road, Ground Floor, Kowloon, Hong Kong, wish to have this letter read only upon my death.

"I wish to clarify that MARIA CHEN [i.e., Fang] . . . is not my natural daughter but was adopted by me and my husband into the family.^[3]

"It is my desire that CHEN YET SEN ROBERT [i.e., Robert], my son, will take care of my funeral arrangements. He is directed to assume full responsibility therefor and he has confirmed that he would do so." (Italics added.)

³ See footnote 2, *ante*.

The document is signed by Wong in Chinese.

Exhibit 2 is dated November 20, 1991. It reads as follows:

“I, CHEN YET SEN ROBERT . . . , HEREBY DECLARE my intention and commitment to make such medical arrangements in the best interest of my mother, WONG SHOU CHEN . . . , whenever the circumstances shall call for such care and attention. I promise that I will undertake these duties and take care of her in the event of her illness.

“I FURTHER CONFIRM that I will take care of all funeral arrangements in the unfortunate event of her passing away. On her request, I shall take such measures as are appropriate for her to be buried next to my father.” (Italics added.)

This document is signed by Robert, apparently in English.

Exhibit 3 is dated a year later October 6, 1992. It restates the language of Exhibit 1:

“It is my desire that CHEN YET SEN ROBERT . . . , my son, will take care of my funeral arrangements. He is directed to assume full responsibility therefor and he has confirmed that he would do so.” (Italics added.)

Exhibit 3 is signed by Wong in Chinese.

Exhibit 5 is dated November 19, 1992. It restates the language of Exhibit 2:

“I, CHEN YET SEN ROBERT . . . , HEREBY DECLARE my intention and commitment to make such medical arrangements in the best interest of my mother, WONG SHOU CHEN . . . , whenever the circumstances shall call for such care and attention. I promise that I will undertake these duties and take care of her in the event of her illness.

“I FURTHER CONFIRM that I will take care of all funeral arrangements in the unfortunate event of her passing away. On her request, I shall take such measures as are appropriate for her to be buried next to my father.” (Italics added.)

This document is signed by Robert, apparently in English.

Chen filed his own petition for instructions to the conservator, arguing these documents expressed Wong’s wishes to be buried in Hong Kong next to her husband and

arguing the documents satisfied section 7100.1. Chen also asked the court that, if it found the documents insufficient under the statute, to nevertheless order that Wong be buried in Hong Kong because that is her residence. Fang opposed Chen's petition.

Trial on Dolch's and Chen's petitions was set for September 8 and 9, 2011. A few weeks before trial, counsel filed a stipulation that two identified witnesses would testify they were familiar with the signatures of Wong and Robert and would identify them on Exhibits 1, 2, 3, and 5, and the court could accept that fact without the need of their testimony. The parties also stipulated that "James Chen will not appear as a witness at the trial of this matter, and will not have his deposition taken in connection with this matter."

True to the stipulation, Chen did not testify at trial. He presented no witnesses. Rather, he relied solely on Exhibits 1, 2, 3, and 5. The only witnesses at trial were Dolch, Fang, and her husband Joseph. There was no evidence how the documents came to be.

Fang testified that, contrary to Robert's express commitment in Exhibits 2 and 5, Robert did not make any medical arrangements for Wong in the 1990's and early 2000's. Fang also testified Wong never told her she wanted to be buried in Hong Kong next to her husband. Fang also testified that, as a practical matter, apparently due to the small size of the cemetery, and/or the plot, it would be impossible to bury Wong next to her husband, in any event.⁴

⁴ Dolch's trial brief states there is a lack of space in the Hong Kong cemetery, and "[c]urrently the apparent choices" for Wong's burial "are either Shanghai or California." There are also apparent difficulties with burying the two side-by-side somewhere else in Hong Kong, because—according to Fang—it is very difficult to exhume a body (in this case, Zao's) under Hong Kong law.

Chen points to a passage in Dolch's testimony that he claims shows Wong wanted to be buried in Hong Kong. Dolch refers to a conversation she had with Fang, in which Fang said, "if she had her wish, she would want her mother here and her father by her mother's side. It was her mother's desire to be buried next to her husband." This seems ambiguous, because Fang seemed to be referring to a hypothetical side-by-side burial in California. In any case, as we shall see below, Wong's written instructions did not expressly specify her wishes for a Hong Kong burial.

As we have noted, Exhibits 1, 2, 3 and 5 are in English. Both Fangs testified that Wong did not speak, write or understand English. This fact is undisputed, as Chen concedes in his opening brief that Wong does not speak English. There is no evidence of any Chinese translations, as Fang points out in her trial brief and in a written closing statement. Chen does not argue to the contrary, and presented no evidence below that the documents were translated into Chinese for Wong—especially the two that she personally signed.⁵ There was no evidence that Wong saw and agreed with Robert's documents.

The probate court found that section 7100, subdivision (a)(3) “is controlling” and that Dolch “should take direction from [Fang], as next of kin, for any pre-need plans relating to funeral and burial arrangements for Madame Wong.” The court further found “[t]he documents proffered by James Chen, and admitted into evidence, do not meet the requirements of [section] 7100.1(a).” The court granted Dolch’s petition, ordering she take directions from Fang, and denied Chen’s petition.

⁵ In his trial brief, Chen touched upon this issue with generalities: “As for [Fang’s] argument that the documents are in English, the court should bear in mind that English is an official language of Hong Kong—and certainly was in 1992, when Hong Kong was still a British colony—and hence there can be no adverse presumption from its use by a Hong Kong domiciliary. If a party wanted to show that there was something wrong with the use of English, that party should have brought in an expert witness to testify about the standards of practice in that jurisdiction, a step that [Fang] declined to take, no doubt because any reputable Hong Kong attorney would explain that legal documents are typically done in English for later use in court and that they are translated for Chinese speakers before being signed. This court should decline to take umbrage with the legislature of Hong Kong over what is appropriate language in that jurisdiction and what is not.”

Chen produced no *evidence* of the translation procedure he describes. Nor did he produce *evidence* that Exhibits 1 and 3 were translated into Chinese for Wong’s understanding before she signed them.

In his appellant’s reply brief, Chen addresses this issue only by pointing out that, on his request, the probate court took judicial notice that English is an official language of Hong Kong.

II. DISCUSSION

Chen contends (1) the documents he submitted satisfy section 7100.1 and the court should have directed the conservator to return Wong's remains to Hong Kong for burial next to her husband; and (2) even if the documents are insufficient the court should have exercised its discretion to order the remains returned to Hong Kong. We disagree with Chen's contentions for the following reasons.

We note at the outset that, generally, an order on a petition for instructions will be reviewed for an abuse of discretion. (See, e.g., *Estate of Denton* (1971) 17 Cal.App.3d 1070, 1075.) The parties dispute the appropriate standard of review regarding issue (1), with Chen arguing we should use a de novo standard of review to interpret the documents at issue and Fang arguing for abuse of discretion. We need not resolve this dispute because we would reach the same conclusion on issue (1) under either standard of review.

1. *The Sufficiency of the Documents*

Section 7100 sets forth a hierarchy, in descending order, of nine categories of persons authorized to control the disposition of a decedent's remains. The first and highest category is the holder of a power of attorney for health care. This is inapplicable here, because Dolch conceded the documents signed by Wong are not powers of attorney and no party argues to the contrary. The second, also inapplicable here, is the "competent surviving spouse." The third category, and the one relied upon by the probate court, is the "sole surviving competent adult child of the decedent. . . ."

But the hierarchy of section 7100 does not apply if "other directions have been given *by the decedent* pursuant to Section 7100.1"

Section 7100.1, subdivision (a), provides: "A decedent, prior to death, may direct, in writing, the disposition of his or her remains and specify funeral goods and services to be provided. Unless there is a statement to the contrary that is signed and dated by the decedent, the directions may not be altered, changed, or otherwise amended in any material way, except as may be required by law, and shall be faithfully carried out upon his or her death, provided both of the following requirements are met: (1) *the directions*

set forth clearly and completely the final wishes of the decedent in sufficient detail so as to preclude any material ambiguity with regard to the instructions; and, (2) arrangements for payment through trusts, insurance, commitments by others, or any other effective and binding means, have been made, so as to preclude the payment of any funds by the survivor or survivors of the deceased that might otherwise retain the right to control the disposition.” (Italics added.)

We see at least three reasons why the documents in this case do not qualify as directions sufficient to satisfy the statutory requirements. The first, and most glaringly obvious, is that Exhibits 1 and 3 (Wong’s directions that Robert “will take care of my funeral arrangements” and “is directed to assume full responsibility therefor”) are *in English*—a language that Wong indisputably did not understand. And there is no evidence whatsoever of any Chinese translations. Thus, it is impossible to conclude these documents are clear and complete instructions *by the decedent*.

Moreover, there was no evidence about the circumstances under which the documents were prepared, how they were prepared, or why there are two seemingly repetitive documents from 1991 to 1992 with the change to Robert’s in 1992.

Second, Exhibits 1 and 3 designate *Robert* as the party to assume full responsibility for Wong’s funeral arrangements. Robert passed away in 2003. The documents designate no one else. They certainly do not designate Chen. Thus, the documents have no force because they designate a deceased person to make funeral arrangements. They cannot possibly satisfy the requirements of section 7100.1, subdivision (a).⁶

Third, Exhibits 1 and 3, the directions made by the decedent, do not “set forth clearly and completely the final wishes of the decedent in sufficient detail so as to preclude any material ambiguity with regard to the instructions.” Wong did not specify her wish to be buried in Hong Kong next to her husband. Only Robert’s documents,

⁶ There is no authority of which we are aware which allows a surviving child of a funeral-arrangements designee to, in effect, “inherit” the designation.

Exhibits 2 and 5, mention that wish as Wong’s “request.” Wong's documents are not an instruction “by the decedent.” Robert’s document is contingent on a future happening and states: “[o]n her request, I shall take such measures,” and there is no evidence that Madame Wong ever made such a request to Robert.

Section 7100.1, subdivision (a) shows a manifest legislative intent to have clear, complete, and unambiguous written directions from the decedent, to prevent precisely the type of situation which obtains here: trying to ascertain the wishes of an elderly person with dementia, who can presumably no longer communicate supplemental directions effectively, based on what she may have once told a person who is now deceased. The trial court did not err by finding the documents insufficient to satisfy the statutory requirements.⁷

2. *The Probate Court’s Discretion*

Assuming arguendo we would find the documents insufficient, Chen contends the probate court should have nevertheless exercised its discretion to order Wong’s remains returned to Hong Kong. He argues Hong Kong is Wong’s country of domicile. He notes the probate court has already ordered Wong to be returned to Hong Kong, an order thwarted by her failing health, so that logically the court should order her remains sent there—because had she returned to Hong Kong she would have died there. Finally, he argues returning her remains for burial beside her husband would be an equitable result.

The probate court is a court of general jurisdiction with all the powers and authority of a superior court. (Prob. Code, § 800.) Furthermore, the probate court enjoys “broad equitable powers.” (*Estate of Kraus* (2010) 184 Cal.App.4th 103, 114.)⁸ The

⁷ Chen argues there was an agency created between Wong and Robert, and that Robert’s documents essentially have the same effect as if Wong signed them herself. The plain words of the statutory scheme, however, require the decedent to make the directions. In any case, the fact the documents were in English, with no evidence of Chinese translations, cannot be overlooked. Neither can the statutory rule that an agency terminates upon the death of the agent. (Civ. Code, § 2355, subd. (c).)

⁸ Respondent Dolch concedes the probate court has jurisdiction because conservatorships are governed by the Probate Code. (Prob. Code, §§ 2200, 2359; see

court in this case was faced with a 95-year-old woman who lives in San Francisco and, no doubt, will live the last of her life there. The question of domicile is not controlling.⁹ Wong's inability to have traveled to Hong Kong in the past is of little relevance now to the disposition of her remains. Equitable considerations of a side-by-side Hong Kong burial pale in the light of the apparent physical impossibility of such a burial and the statutory scheme which, in light of the insufficiency of Chen's documentary evidence, vests authority for disposition in Fang. The trial court did not abuse its discretion.

III. DISPOSITION

The orders of the probate court are affirmed.¹⁰

Marchiano, P.J.

We concur:

Margulies, J.

Dondero, J.

Estate of Jimenez (1997) 56 Cal.App.4th 733, 739–740.) But she argues the probate court lacks direct jurisdiction over matters involving sections 7100 and 7100.1. This is a distinction without a difference. It is self-evident that the existence of the conservatorship gives the probate court jurisdiction to determine issues arising under sections 7100 and 7100.1.

⁹ Without deciding the issue, we question whether Hong Kong is Wong's domicile. Domicile requires residence and the intention to remain. (See *Johnson v. Johnson* (1966) 245 Cal.App.2d 40, 44.) There was no evidence below that Wong presently maintains a residence in Hong Kong, and apparently no evidence she intends to return there, if possible.

¹⁰ Dolch seeks clarification of who is to pay pre-need expenses. It is uncertain whether this issue was raised below. Dolch can seek further instructions from the probate court in this regard. We note that section 7100, subdivision (d) specifies who is liable for the reasonable cost of final disposition of remains.