

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

KAREN J. CASEY,

Plaintiff and Respondent,

v.

KURT KAUPKE, as Trustee, etc.,

Defendant and Appellant.

A135183

(City & County of San Francisco
Super. Ct. No. PTR-10-293516)

In probate proceedings involving disputes between residual beneficiaries of the Kaupke family trust, Karen J. Casey, a judgment creditor of Kurt Kaupke, filed a document entitled “Petition of Judgment Creditor Karen J. Casey for Order that Trustee Satisfy All or Part of Judgment from Amounts which Beneficiary Kurt C. Kaupke is Entitled.” The petition “requests, pursuant to Code of Civil Procedure section 709.010 and Probate Code section 15306.5(a), that the Trustee be ordered to satisfy all or part of the [judgment held by Casey against Kaupke] from any distributions from the Trust that are due to [Kaupke] up to 25% of the aggregate distributions from the Trust to [Kaupke].”

Code of Civil Procedure section 709.010 provides that a judgment debtor’s interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon a petition filed in probate court, and that “[n]othing in this section affects the limitations on the enforcement of a money judgment against the judgment debtor’s interest in a trust under Chapter 2 (commencing with Section 15300) of Part 2 of Division 9 of the Probate Code” (Code Civ. Proc., § 709.010, subd. (c)). Probate Code section 15306.5,

subdivision (a) in turn provides, “Notwithstanding a restraint on transfer of the beneficiary’s interest in the trust under Section 15300 or 15301, and subject to the limitations of this section, upon a judgment creditor’s petition under Section 709.010 of the Code of Civil Procedure, the court may make an order directing the trustee to satisfy all or part of the judgment out of the payments to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee’s discretion, has determined or determines in the future to pay to the beneficiary.” Subdivision (b) limits such an order to “25 percent of the payment that otherwise would be made to, or for the benefit of, the beneficiary.” Subdivision (c) provides this further limitation: “An order under this section may not require that the trustee pay in satisfaction of the judgment any amount that the court determines is necessary for the support of the beneficiary and all the persons the beneficiary is required to support.”

In response to Casey’s petition, Kaupke filed a verified objection, alleging that his “business is in a slow period due to the current economy. The family home is in foreclosure. [Kaupke] is required to support his wife and minor child. The petition should be denied pursuant to Probate Code section 15306.5(c).” At a hearing on the petition, Kaupke sought to present evidence of these facts. However, over his objection and without an evidentiary hearing, the court entered the requested order to pay to Casey up to 25 percent of the amounts payable from the trust to Kaupke, observing that “by limiting the amount that judgment creditors could obtain to 25% of the trust distribution (subsection (b)), the legislature had already provided protection to the judgment debtor.”

Kaupke appeals the order, asserting that the court erred in denying him the opportunity to establish his right to defeat the petition under subdivision (c) of section 15306.5. Casey “admits that the order should be reversed and consents to reversal under the doctrine of Confession of Error,” adding that “if Probate Code § 15306.5 applies to this situation, a brief evidentiary hearing may be permitted.” We agree. The limitation provided by section 15306.5, subdivision (b) applies in every case to which section 15306.5 applies. Subdivision (b) does not preclude the potential applicability of subdivision (c), which may further limit or preclude entirely any distribution under

subdivision (a). Kaupke is entitled to a hearing to determine the applicability of that limitation. (Prob. Code, § 1000; *Estate of Lensch* (2009) 177 Cal.App.4th 667, 676.) Since Kaupke has properly raised the issue in his pleading, no order should be entered under subdivision (a) unless, after receiving and considering the evidence, the court finds that the evidence does not establish that the funds requested by Casey are necessary for the support of Kaupke or those he is obligated to support.

In her brief to this court, Casey indicates that upon remand she intends to seek leave to amend her petition to allege that, contrary to the position she has taken thus far in the litigation, Probate Code section 15306.5 has no application here and places no limitation on the amount she is entitled to demand from Kaupke's interest in the trust. She now asserts that section 15306.5 applies only to a beneficiary's interest under a spendthrift trust, and that the Kaupke family trust contains no spendthrift provision. The merits of this contention, and of Casey's right to change course at this stage of the proceedings, has not been addressed by Kaupke or by the probate court. In remanding the matter to correct the acknowledged error below, we express no views on these issues, which must be determined in the first instance by the probate court.

The order, dated March 8, 2012, is reversed and the matter is remanded for further proceedings. The parties shall bear their respective costs on appeal.¹

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J.

¹ In view of this disposition, the motion of Kaupke's attorney to be relieved as counsel is denied without prejudice to renewal of the motion in the probate court.