

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

Estate of LUCILLE DIXON, Deceased.

EUGENE SCHNEIDER, as Special
Administrator, etc.,

Petitioner and Respondent,

v.

TURELL L. BARNES SR.,

Objector and Appellant.

A142942

(Alameda County
Super. Ct. No. RP07348084)

This probate matter began in September 2007, when Armaline Childress filed for appointment as the personal representative of her grandmother's estate.¹ Letters of administration were issued in March 2008.

The only significant asset of the estate was an interest in real property located at 6919 Hamilton Street, Oakland, California (the Hamilton Street property), as to which there already was a dispute about ownership. In 2004, appellant Turell Barnes (Turell)² filed a quiet title action, apparently claiming to be the surviving joint tenant. This action was dismissed a year later. In 2008, Childress filed a quiet title action on behalf of the

¹ We conclude this matter is proper for disposition by memorandum opinion in accordance with California Rules of Court standard 8.1.

² We refer to the parties by their first names when necessary to avoid confusion.

estate, and in 2010, judgment was entered against Turell, confirming only a one-sixth interest in the property.

In 2012, Childress's lawyer, Eugene Schneider, sought to be relieved as counsel of record on the ground he was unable to reach his client. This motion was ultimately denied, and Schneider was ordered to file an accounting on pain of sanctions. In the meantime, Turell complained vociferously that Childress was not carrying out her duties and the estate should be closed. He also sought to have himself appointed personal representative and continued to claim the Hamilton Street property should be distributed to him. He claimed to have made all loan payments on the property and to have redeemed it from a tax lien sale. Eventually, the surety for Childress got involved, given the \$100,000 bond it had issued and Turell's demand for a surcharge.

In November 2012, the probate court appointed Schneider as special administrator in an effort to get the estate closed, accepted his accounting and continued the matter for final distribution. Turell unsuccessfully sought to challenge the judge and then sought to have Schneider removed as administrator and the probate estate "dismissed."

In March 2013, Turell filed a notice of appeal which did not identify or specify the date of entry of the order he intended to challenge. It was dismissed six months later by this court.

In the meantime, Schneider filed a final inventory and appraisal. Turell, in turn, filed a "Petition for Color of Law," in which he continued to maintain he was the true owner of the Hamilton Street property and entitled to its possession, and that the probate matter should be dismissed. Following a hearing on January 29, 2014, at which Turell was allowed to testify, the probate court denied his petition, including on the ground his claims to the property were foreclosed by the long-since final 2010 judgment in the quiet title case. The court ordered Schneider to file a petition to determine the heirs of the estate, which he did on March 26.

The heirship issues were heard July 15, 2014, and the probate court issued a detailed, five-page written order on August 1. The court declared that Dixon's daughters,

Dolores Barnes (Dolores) and Doris Lynch, were the heirs, entitled to an equal share of her estate. However, by the time the court ruled, both were deceased.

As to Dolores's share of Dixon's estate, the court ruled she was survived by a spouse, Willie Barnes (Willie), and three children, Childress, Essie Harris, and Turell. As for the Hamilton Street property, the 2010 quiet title judgment determined Dixon held a one-half interest in it, and Dolores, Lynch and Turell each held a one-sixth interest in it as tenants in common (i.e., one-third interests in the remaining one-half interest). Accordingly, as to the interest in the property Dolores inherited from Dixon (half of the half-interest Dixon had held), the court ruled that under the laws of intestate succession, Willie had a one-third interest in it and her three children had a two-thirds interest. This ultimately meant that by virtue of the interest Dolores inherited from Dixon and the interest Dolores had held herself, Willie had a $5/36$ interest in the property, the two daughters each had a $5/54$ interest, and Turell had a $14/54$ interest (combining his inherited interest and his interest decreed in the quiet title action).

Turell filed a notice of appeal on September 2, 2014. Although this notice also did not identify or specify the date of entry of the order being challenged, it is presumably the August 1, 2014 heirship order.

It is clear from Turell's briefs that he is continuing to dispute the ownership interests in the Hamilton Street property. He has not, however, provided a reporter's transcript of the July 15, 2014 hearing. Nor did he include in the record on appeal any exhibits proffered or admitted at that hearing. Accordingly, the only record item pertaining to *that* hearing that is before this court is the probate court's written order.

There is nothing about the probate court's written order, moreover, that reflects any error on the part of the court. On the contrary, the order is long and detailed, and carefully enumerates the interests of those claiming through Dixon's two daughters, including Dolores, from whom Turell has inherited. While Turell maintains he was denied "due process," the record demonstrates he was afforded a great many opportunities to present his case, including testifying at the heirship hearing.

As the party seeking reversal, it was incumbent upon Turell to provide an adequate record to overcome the presumption that the lower court was correct and to show prejudicial error. (*See Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *People v. Sullivan* (2007) 151 Cal.App.4th 524, 549 (*Sullivan*).) He has not done so, and we must therefore presume “the trial court acted duly and regularly and received substantial evidence to support its findings.” (*Stevens v. Stevens* (1954) 129 Cal.App.2d 19, 20; accord, *Sullivan, supra*, at p. 549.)

DISPOSITION

The August 1, 2014, order of the probate court “Determining Persons Entitled to Distribution of Estate” is affirmed. Respondent to recover costs on appeal.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.

A142942, *Estate of Lucille Dixon*