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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

Estate of CORDELL JENKINS, Deceased.	B232204
H.J. BRYANT et al., Petitioners and Respondents, v. T.L. JENKINS, Objector and Appellant.	(Los Angeles County Super. Ct. No. BP097863)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael I. Levanas, Judge. Dismissed.

George Holloway for Objector and Appellant.

Law Offices of Kenneth S. Wolf and Kenneth S. Wolf for Petitioner and Respondent H.J. Bryant.

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## BACKGROUND

This dispute regarding the estate of Cordell Jenkins is before us for the third time. The appellant is Cordell's son, T.L. Jenkins. This matter involves two related probate cases: (1) the "Conservatorship Case" (case No. BP086860) in which appellant sought to be appointed conservator of Cordell's person and estate; and (2) the "Successor-Trustee Case" (case No. BP097863) in which another of Cordell's sons and her granddaughter sought to be appointed successor trustees of Cordell's living trust.

In the first appeal, we affirmed an order imposing nonmonetary discovery sanctions against appellant in the Conservatorship Case. (*In re Conservatorship and Estate of Jenkins* (Dec. 15, 2008, B199837 [nonpub. opn.] (*Jenkins I*)).) The sanctions included issue preclusion and evidentiary sanctions that established several factual issues adversely to appellant, and barred him from introducing contrary evidence.

The second appeal concerned an order in the Successor-Trustee Case, granting the trustee's Probate Code section 850 petition and directing appellant to deliver certain real and personal property to the trustee.<sup>1</sup> (*Estate of Cordell Jenkins* (Jul. 26, 2010, B216992 [nonpub. opn.] (*Jenkins II*)).) In *Jenkins II*, appellant contended the probate court erred in granting the section 850 petition without allowing him to present evidence because of the discovery sanctions that were at issue in *Jenkins I*. Appellant argued he was denied due process. He also argued the probate court's order directing him to convey property to the trustee was void.<sup>2</sup> We rejected appellant's arguments and affirmed the probate court judgment. On October 13, 2010, the California Supreme Court denied appellant's petition for review of the *Jenkins II* decision.

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<sup>1</sup> Probate Code section 850 allows a person to request that the court make certain orders, including conveying property in compliance with the terms of a decedent's wishes after his or her death.

<sup>2</sup> As we summarized in *Jenkins II*, appellant argued the challenged probate court order was void because "the probate court 'acted in excess of jurisdiction in transferring discovery sanctions from the Conservatorship case to the unrelated [section 850 petition trial], all of which is not part of the Discovery Act.'" (*Jenkins II*, at p. 10.)

After we issued our remittitur, appellant filed a motion in the probate court to vacate the judgment. Appellant's motion to vacate once again attacked the probate court order at issue in *Jenkins II*. Appellant contended the original judgment was void because it violated his federal constitutional right to due process. He also asserted the Civil Discovery Act, as applied, violated his due process rights. The trial court denied the motion to vacate. Appellant then filed the instant appeal. On our own motion we dismiss the appeal without considering its merits because it was taken from a nonappealable order.<sup>3</sup>

## DISCUSSION

### **No Appeal Lies from the Denial of Appellant's Motion to Vacate**

“It is established that an order denying a motion to vacate a judgment is deemed appealable only to the extent it raises new issues unavailable on appeal from the judgment. This restriction is imposed to prevent both circumvention of time limits for appealing and duplicative appeals from essentially the same ruling. [Citations.]” (*Malatka v. Helm* (2010) 188 Cal.App.4th 1074, 1082.) As explained in Witkin: “The denial of a motion to vacate a prior judgment or order is an order after final judgment that affects the judgment and therefore can be appealable under certain special circumstances. [Citation.] However, these circumstances are rare; most of the orders are nonappealable for compelling reasons: [¶] (1) If the prior judgment or order was appealable, and the grounds on which vacation is sought existed before entry of judgment, the correctness of the judgment should be reviewed on an appeal from the judgment itself. To permit an appeal from the order refusing to vacate would give the aggrieved party two appeals from the same decision or, if the party failed to take a timely appeal from the judgment, an

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<sup>3</sup> In his appellate briefing, appellant argued the probate court judgment was “void,” but he did not specifically address appealability, other than to quote a case indicating when the trial court denies a motion to vacate a judgment that was entered by a court lacking jurisdiction, the order denying the motion to vacate must be “appealed in the regular manner.” Respondent argued the appeal was barred by collateral estoppel. Pursuant to Government Code section 68061, we asked the parties to provide supplemental briefing on the issue of whether this appeal was taken from an appealable order. (*City of Gardena v. Rikuo Corp.* (2011) 192 Cal.App.4th 595, 599.)

unwarranted extension of time starting from the subsequent order.” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 197, pp. 273–274; *Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1576.)

This appeal presents the exact situation described above. The prior judgment was appealable. Appellant could, and did, appeal the correctness of the judgment in his prior appeal. He is not entitled to a second appeal from the probate court decision.

In an attempt to avoid these limitations on appealability, appellant styled his motion to vacate as challenging a “void” judgment. In general, an appeal may be taken from an order denying a motion to vacate a void judgment (see Witkin, *supra*, § 201, p. 278). However, “void” in this context does not mean the trial court made a legal error. “A judgment is void if the court rendering it lacked subject matter jurisdiction or jurisdiction over the parties. Subject matter jurisdiction ‘relates to the inherent authority of the court involved to deal with the case or matter before it.’ [Citation.] Lack of jurisdiction in this ‘fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.’ [Citation.] [¶] In a broader sense, lack of jurisdiction also exists when a court grants ‘relief which [it] has no power to grant.’ [Citations.] Where, for instance, the court has no power to act ‘except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites,’ the court acts without jurisdiction in this broader sense. [Citation.]” (*Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 691.)

While appellant nominally argues the trial court’s orders were void, he has advanced no arguments, either below or in this court, indicating the probate court lacked jurisdiction to enter the challenged orders. As we understand his arguments, appellant contends he was denied due process because the probate court imposed pretrial discovery sanctions; the probate court granted the section 850 petition without allowing appellant the chance to present evidence; and, as applied or interpreted by the probate court and affirmed in this court, the Civil Discovery Act is unconstitutional because it allows for a deprivation of property without due process. None of these arguments suggest the

probate court lacked jurisdiction to make the challenged orders. “Errors of substantive law are within the jurisdiction of a court and are not typically acts beyond the court’s fundamental authority to act.” (*Fireman’s Fund Ins. Co. v. Workers’ Comp. Appeals Bd.* (2010) 181 Cal.App.4th 752, 767.) Appellant has not advanced a colorable argument that the probate court lacked jurisdiction “ ‘ ‘in the ‘fundamental sense’ (i.e., jurisdiction over the subject matter and the parties) . . .” ’ [Citations.]” (*Ibid.*)<sup>4</sup>

Moreover, although appellant attempts to recharacterize his arguments, it is clear this appeal only raises issues identical to those in his two prior appeals. Appellant previously argued his due process rights were violated. In *Jenkins I*, we explicitly concluded appellant was not denied due process when the court imposed issue and evidentiary sanctions against him. In *Jenkins II* we specifically responded to and rejected appellant’s argument that the probate court denied him due process in connection with the section 850 petition. We also explicitly rejected the argument that the probate court’s judgment was void. A motion to vacate a judgment is not appealable to the extent it simply raises issues that were or could have been raised in a prior appeal. (*Malatka, supra*, 188 Cal.App.4th at p. 1082; Witkin, *supra*, § 183, p. 260, [“If the appeal from the order after judgment would present the same questions as an appeal from the judgment itself, the order is not appealable.”]; § 197, pp. 273-274.)

Appellant’s motion to vacate did not rest on grounds that would render the judgment void. Instead, the motion raised claims of error that had already been raised and decided in two prior appeals. Under the circumstances, the order denying appellant’s motion to vacate fell squarely within the general rule that such orders are not appealable.

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<sup>4</sup> The case on which appellant primarily relies, *Neal v. State of California* (1960) 55 Cal.2d 11, is inapposite. *Neal* concerned a writ of habeas corpus challenging a criminal defendant’s sentence. The issue presented in the case was whether the trial court had entered a statutorily unauthorized sentence, thereby acting “in excess” of its jurisdiction. (*Id.* at pp. 16-17.)

**DISPOSITION**

The appeal is dismissed.

We concur:

BIGELOW, P. J.

FLIER, J.

GRIMES, J.