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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MATTHEW EHRET et al.,

Plaintiffs and Respondents,

v.

LAWRENCE E. SANCHEZ,

Defendant and Appellant.

2d Civil No. B260068
(Super. Ct. No. 56-2012-00422338-
PR-TR-OXN)
(Ventura County)

Appellant Lawrence E. Sanchez and his sister's children, Matthew and Kristen Ehret (collectively "respondents"), are beneficiaries of the Gloria R. Sanchez trust.¹ Lawrence was the sole trustee. Respondents petitioned the probate court for a trust accounting, distribution to beneficiaries, surcharge of trustee, removal of trustee and appointment of successor trustee.

Following a five-day court trial, the probate court granted the petition and entered judgment for respondents. Lawrence challenges the court's findings but fails to provide a reporter's transcript of the trial. In the absence of a reporter's transcript or suitable substitute, we must presume the judgment is correct. (See

¹ To avoid confusion, we refer to the parties by their first names.

Stasz v. Eisenberg (2010) 190 Cal.App.4th 1032, 1039 (*Stasz*.) We therefore affirm.

PROCEDURAL BACKGROUND

In 1997 Gloria executed a living trust naming her two children, Lawrence and Patricia Ehret, as primary beneficiaries. Patricia predeceased Gloria. Upon Gloria's death, Lawrence became the sole trustee. Respondents claim Patricia's share of the trust estate as successor beneficiaries.

The parties disputed whether a 2010 amendment to the trust required an equalization payment to settle unequal distributions resulting from non-probate transfers made outside of the trust. Robert M. Baskin, the attorney who drafted the amendment, testified at trial, along with several other witnesses. The probate court determined, based on the extrinsic evidence, that the amendment did in fact require an equalization payment and found that Lawrence improperly withdrew cash from several of Gloria's accounts. It ordered him "[t]o rectify the improper equalization, distributions and withdrawals" by paying respondents \$194,264. Finding a breach of trust, the court also removed Lawrence as trustee.

The probate court entered judgment on March 17, 2014, and notice of entry was served on April 8, 2014. Respondents moved for an award of attorney fees, and on September 9, 2004, the court issued a *final* judgment incorporating the language from the original judgment with certain additions. Among other things, it "amended" the judgment to award \$138,967.19 in attorney fees to respondents, to require Lawrence to deliver all trust property to the successor trustee and to clarify that the equalization provision included distributions from five specific accounts. Lawrence, who is self-represented, appeals that judgment.

DISCUSSION

Appealability

Respondents contend Lawrence's notice of appeal is untimely because it was filed more than 60 days after service of the notice of entry of the original

judgment entered March 17, 2014. Lawrence maintains his appeal was timely filed from the final judgment, which "amended" the earlier judgment.

The amended judgment made several substantive changes, including requiring Lawrence to turn over trust property to the successor trustee and specifying the accounts subject to the equalization provision. Because the amendment involved the exercise of judicial discretion and was not merely a clerical change, a new appeal period began running from date of entry of the amended judgment. (See *Torres v. City of San Diego* (2007) 154 Cal.App.4th 214, 222; *Phillips v. Phillips* (1953) 41 Cal.2d 869, 875.) The notice of appeal was timely.

Inadequate Record on Appeal

Although Lawrence's opening brief is not a model of clarity, it is apparent he is challenging factual findings in the probate court's statement of decision. He specifically disputes the findings (1) that the trust amendment requires an equalization payment to settle unequal distributions, (2) that respondents are entitled to \$37,063 taken by Lawrence in 2010, (3) that the trust is owed \$140,460 for wrongful cash withdrawals from four separate accounts and (4) that he committed a breach of trust. As respondents point out, Lawrence did not retain a court reporter to record the trial proceedings and, as a result, there is no reporter's transcript to support his contentions on appeal. Nor is there a settled statement to assist the court. (See Cal. Rules of Court, rule 8.137.) The appellant's appendix also is incomplete.²

² The appendix includes a limited number of documents from the probate court's record: final judgment; final statement of decision; Gloria's will and trust; Lawrence's request for statement of decision; minutes of the court's announcement of decision; trustee's first accounting; original tentative decision following trial; partial satisfaction of judgment; copies of two cases upon which Lawrence relies; and a page of Baskin's notes.

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown [by the appellant]. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' [Citations.]" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416; *Foust v. San Jose Const. Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9.) If the record on appeal does not contain all the documents or other evidence submitted to the trial court, a reviewing court will "decline to find error on a silent record, and thus infer that substantial evidence" supports the trial court's findings. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955; see Cal. Rules of Court, rule 8.163.) In other words, "in the absence of a required reporter's transcript and other [necessary] documents, we presume the judgment is correct. [Citations.]" (*Stasz, supra*, 190 Cal.App.4th at p. 1039.)

We conclude Lawrence's failure to provide this court with a reporter's transcript of the trial or suitable substitute requires that the judgment be affirmed. His appeal cannot be resolved utilizing only selected documents from the probate court's record. The court's decision was based on the factual findings made on the evidence presented to it. We are not privy to that evidence; thus, we are unable to review the rulings made at trial. We can only presume they are supported by the record and that no abuse of discretion occurred. (See *Stasz, supra*, 190 Cal.App.4th at p. 1039.)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Rebecca S. Riley, Judge
Superior Court County of Ventura

Lawrence E. Sanchez, in pro. per., for Defendant and Appellant.

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