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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TRACY JONES, et al.,

Objectors and Appellants,

v.

CYNTHIA PALM,

Petitioner and Respondent.

B269459

(Los Angeles County
Super. Ct. No. BP157091)

Appeal from an order of the Superior Court of Los Angeles County,
David J. Cowan, Judge. Appeal dismissed.

Douglas D. Kappler, for Objectors and Appellants.

Lurie, Zepeda, Schmalz, Hogan & Martin, Troy L. Martin and M.
Damien Holcomb, for petitioner Cynthia Palm.

Marion Hanson established a revocable trust and named her grandchildren, Alison Jones and Kevin Jones, as contingent beneficiaries. The Trust's primary asset is a 70 percent interest in a single-family residence where Hanson lived until December of 2013. The remaining 30 percent of the property is owned by Alison and Kevin Jones in their individual capacities.

After Hanson moved out of the property, the trustee, Cynthia Palm, became involved in a dispute with Kevin and Alison Jones regarding the distribution of the property's rental income. In April of 2014, Alison, Kevin and their uncle, Tracy Jones, filed a civil action alleging that Palm had breached her fiduciary duties by failing to provide an accounting concerning the property, and refusing to distribute any of the rental income.

While the Joneses' civil action was pending, Hanson delivered a document to Palm that purported to remove her as trustee. Palm then filed a petition under Probate Code section 17200 seeking an order confirming her resignation as trustee, and compelling the Trust to pay the legal expenses she incurred in the civil action. Marion Hanson did not file any response to the petition. The Joneses, however, filed objections.

The court denied both requests without prejudice. On the question of attorneys' fees, the court explained that while Palm was entitled to recover the fees from the Trust, the court could not determine the amount of the fees until the civil action was resolved.

The Joneses appeal both decisions. We dismiss the appeal for lack of standing, concluding that none of the appellants had an interest or right that was injuriously affected by the probate court's order.

FACTUAL BACKGROUND

A. Background Facts

1. Alison and Kevin Jones's interest in the Rancho Palos Verdes property

Marion Hanson lived in a single-family residence located in Rancho Palos Verdes, California. At some point in the 1980s, Hanson transferred a 30 percent interest in the property to her then-living daughter Beverly Jones,

which later passed to Beverly's husband David Jones.¹ When David Jones died in 2001, the 30 percent interest was transferred to David's estate, where it was held for the benefit of David and Beverly's two children (Hanson's grandchildren) Kevin and Alison Jones. In April of 2014, David's brother Tracy Jones, acting in his capacity as executor of David's estate, recorded a grant deed transferring the estate's interest in the Rancho Palos Verdes property to Kevin and Alison Jones.

2. The Marion Hanson Declaration of Trust

On August 16, 1990, Hanson established a revocable trust named the Marion W. Hanson Declaration of Trust (the Trust). The Trust's principal asset is Hanson's 70 percent interest in the Rancho Palos Verdes property. Hanson is the sole beneficiary of the Trust for her lifetime. The Trust's beneficiaries include (among others) Hanson's daughter, Joan Adams, and Hanson's grandchildren, Kevin and Alison Jones.

As originally executed in 1990, Hanson was appointed to serve as the trustee, with her daughters Beverly Jones and then Joan Adams designated as successor trustees. On March 8, 2012, however, Hanson executed a "Second Amendment" to the Trust that appointed Cynthia Palm, a certified professional fiduciary, to serve as the trustee. The amendment also named two successor trustees: Jan Mills was appointed as Palm's successor, and Joan Adams was named as Mills's successor.

In December of 2013, Hanson moved out of the Rancho Palos Verdes property, and into an assisted living facility. She later moved to Lubbock Texas, where she currently resides with her daughter Joan Adams. In March of 2014, Palm rented out the Rancho Palos Verdes property at a rate of \$4,500 a month.

¹ The appellants' opening brief states that this 30 percent transfer occurred in 1995, but the materials they cite indicate that the transfer occurred "late in the 1980s." In light of our disposition, the precise timing of the transfer is immaterial.

3. Summary of the civil action against Palm

Shortly after Palm rented out the property in 2014, she became involved in a dispute with Kevin and Alison Jones regarding distribution of the rental income. The Joneses asserted that they were entitled to 30 percent of the rental income based on their ownership interest in the property. Palm, however, contended that Hanson was entitled to retain all of the rental income because she was paying all of the expenses on the property.

On April 28, 2014, Tracy Jones, acting in his capacity as executor of David Jones's estate, Kevin Jones and Alison Jones (collectively the Jones parties), filed a lawsuit against Palm. (See *Jones et al. v. Palm, et. al.* (Sup. Ct. Los Angeles County, 2014, No. YC069820) (hereafter the *Jones* action).) The complaint alleged that Palm owed a fiduciary duty to Kevin and Alison Jones based on the parties' status as co-tenants of the Rancho Palos Verdes property. The complaint further alleged Palm had breached this duty in numerous ways including, in relevant part: "dealing with the property to the exclusion of the plaintiffs"; "wrongfully retaining all the rental proceeds"; and refusing to provide an accounting of the property.

On September 8, 2014, the Jones parties filed a first amended complaint alleging a single cause of action for "partition, accounting and damages." The amended complaint asserted that the plaintiffs were "entitled to a partition [of the Rancho Palos Verdes property] as a matter of absolute right under . . . [C]ode of Civil Procedure section 872.210." It further alleged that Palm had violated her duties as a co-tenant by, among other things, "wrongfully tak[ing] possession and control of the property"; "renting and sequestering all rents [from the property]"; and failing "to account to plaintiffs for the income and expenses of the property. In their prayer for relief, the Jones parties sought an order requiring the property to be sold through a partition sale, and "damages . . . for the misappropriation of their interest in the rents and revenues."

B. Palm's Probate Code Petition

1. Summary of the petition and objections

While the *Jones* action was pending, Marion Hanson delivered Palm a document that purported to remove Palm as trustee, and appoint Joan Adams as the successor trustee. Shortly thereafter, Palm filed a petition pursuant to Probate Code section 17200 seeking an order: (1) confirming her resignation as trustee and appointing Joan Adams as the successor trustee; (2) approving Palm's first and final accounting; and (3) compelling the Trust to pay Palm reasonable compensation for her services as the trustee, and for the legal expenses she had incurred in defending against the *Jones* action.

On her first claim for relief, Palm explained that although she did not dispute the validity of the instrument removing her as trustee, the document did not "purport to be an amendment of the Trust," and appeared to conflict with a Trust provision that "designated Jan Mills as the successor trustee before Joan . . . Adams." Palm further alleged she had not received any evidence indicating that Jan Mills had declined to succeed her as trustee. Palm explained that "[i]n an abundance of caution, [she was] seek[ing] an order pursuant to Probate Code § 15640(d) accepting [Palm's] resignation in favor of Joan . . . Adams, or whomsoever the Court should appoint in [Palm's] place."

On her second claim for relief, Palm provided a summary of all Trust assets and debts, as well as all charges and credits the Trust had incurred between February 17, 2012 (the day Palm became trustee) and October 6, 2014 (the date of the removal instrument). Palm also included an exhibit that included extensive documentation supporting her summary of the accounting.

On her third claim for relief, Palm asserted that under the terms of the Trust, she was authorized to retain legal representation to defend herself and the Trust in the *Jones* action. She further alleged that she was entitled to recover these attorneys' fees from the Trust because the legal services had been necessary to protect "the trustee, the Settlor, and the Trust's primary asset, the [p]roperty." Palm also requested compensation for the services she had provided to the Trust as the trustee. The petition sought an order

requiring the Trust to pay approximately \$16,000 for attorneys' fees incurred in defending the civil action, and approximately \$6,000 for trustee compensation.²

The Jones parties filed objections to the petition.³ Although the objectors supported Palm's removal as trustee, they argued that the court should deny her request for attorneys' fees incurred in the *Jones* action. The objectors contended that Palm's defense in that matter had not been undertaken "for the benefit of the trust," explaining: "The trust was not under attack [in the *Jones* action], nor was Cynthia Palm in her capacity as trustee. The [suit] was brought because . . . Palm owed a fiduciary duty to those objectors having a 30 percent interest in the [property]. Essentially, Palm was acting on her own when she assumed exclusive control over the 30 percent interest that did not belong to the Trust." In their prayer for relief, objectors sought an order naming Joan Adams as the successor trustee, and requiring Palm to "disgorge all fees obtained as a result of her misdeeds." They also requested that the court decline any "further compensation or costs be awarded to her or her attorneys."

In a response to the objection, Palm argued that none of the Jones parties had standing to participate in the probate proceedings because: (1) Tracy Jones had no interest whatsoever in the Trust; and (2) although Kevin and Alison Jones were named as beneficiaries, the settlor (Hanson) was still living, and therefore retained all rights to act with respect to the Trust. (See Probate Code, § 15800, subd. (b).) Palm also argued that even if any of the Jones parties had standing to participate in the proceedings, the terms of the Trust specifically authorized the trustee to "defend actions and proceedings regarding [the Trust]," and to "employ counsel." According to Palm, these provisions entitled her to recover any attorneys' fees she had incurred in the

² The petition clarified that the \$6,000 Palm was seeking as trustee compensation was in addition to approximately \$30,000 she had already received from the Trust for services rendered prior to July 31, 2014.

³ Joan Adams was also listed on the pleading as an objector, but is not a party to this appeal.

Jones action because the claims against her in that case related to services she had performed in her role as trustee.

On May 28, 2015, Department One of the Los Angeles Superior Court issued an order relating the *Jones* action to the probate matter, and transferring the case to the probate court.

2. *The probate court's order on Palm's petition*

After receiving briefing and evidence from the parties, the probate court filed a statement of decision on October 13, 2015 denying Palm's petition in part, and granting it in part.⁴ The court denied without prejudice Palm's request for an order confirming her resignation as trustee, and appointing Joan Adams as her successor. The court explained that the objectors had never responded to Palm's assertion that "the alleged appointment of Joan [Adams] as successor trustee may not be effective in view of the instrument . . . not amending the Trust to no longer have Jan [Mills] act prior to Joan." The court also noted that the parties had provided no evidence that Jan Mills had declined to be a trustee. As stated by the court: "Though impliedly, Settlor [Hanson] may have agreed for [Adams] to serve, rather than [Mills], the Court cannot draw such conclusion where the alleged appointment of [Adams] does not reference Settlor's earlier choice of [Mills] to serve if Palm were not to do so."⁵

On Palm's remaining requests for orders approving her accounting and compelling the Trust to reimburse the attorneys' fees incurred in the *Jones* action, the court concluded that Tracy Jones lacked standing to object

⁴ After the petition and opposition had been filed, the parties "agreed to a briefing scheduling for filing of further papers related to [the] petition and for the court to thereafter take the petition under submission without further argument or evidentiary hearing."

⁵ In a footnote, the court explained that after it had taken the case under submission, the *Jones* parties had filed a signed amendment to the Trust removing Palm as trustee, and naming Joan Adams as the successor trustee. The court struck this evidence, explaining that it could not "consider additional information not part of the record when this petition was submitted for decision."

because he had no interest in the Trust or the Rancho Palos Verde property. The court also concluded Alison and Kevin “lack[ed] standing [to object to those requests] as . . . beneficiaries” because the Trust was revocable, and Hanson was still living. The court further found, however, that Kevin and Alison did have standing to object to Palm’s accounting and her request for fees “by virtue of their 30 percent interest in the [p]roperty.”

The court concluded, however, that Palm had established she was entitled to recover trustee compensation and the attorneys’ fees incurred in the *Jones* action. The court explained that the objectors had provided no evidence that Palm engaged in any wrongdoing in her capacity as trustee, nor had they provided any “evidence that . . . the Settlor had any objection to the account or the fees.” The court further explained that it could not yet determine “what amount of attorneys’ fees is reasonable” because the *Jones* action was still being litigated. The court thus denied the Palm’s request for attorneys’ without prejudice, and invited her to “file another petition [when] the [*Jones* action] is finally concluded. . . .”

After issuing its statement of decision, the court filed a written order: (1) denying without prejudice Palm’s request for an order confirming her resignation as trustee, and appointing Joan Adams as successor; (2) granting Palm’s request for an order “settling, allowing and approving the First and Final Account”; (3) granting Palm’s request for “an order fixing, approving and compelling payment of reasonable trustee compensation”; and (4) denying without prejudice Palm’s request for an order compelling payment of reasonable attorneys’ fees “pending a resolution of the Civil Action.” The order included additional language clarifying that Palm was entitled to “defend the [*Jones*] matter” at the “trust[.]’s] expense”; that she did “not breach any fiduciary duty so as to preclude her entitlement to payment for her attorneys and trustee’s fees by the Trust”; and that she was permitted to “file another petition seeking [attorneys’] fees” after the civil action was resolved.

DISCUSSION

The *Jones* parties seek review of two aspects of the probate court’s order. First, they argue that we should reverse the court’s “orders . . . refusing to accept the resignation of Palm as trustee and declining to

recognize the appointment of Joan as successor trustee.” Second, they contend we should reverse the court’s “orders . . . allowing the defense of [the *Jones* action] as an expense of the Trust.” Palm, however, argues that appellants have failed to show how they were aggrieved by either of these orders, and therefore lack standing to appeal them.

A. Summary of Applicable Legal Principles

1. Standing to appeal

“Standing to appeal is jurisdictional [citation] and the issue of whether a party has standing is a question of law [citation].’ [Citation.] To have standing on appeal, a person generally must be a party of record and sufficiently aggrieved by the judgment or order. (Code Civ. Proc., § 902; [citation].)” (*Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 292.) “To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court’s decision. A nominal interest or remote consequence of the ruling does not satisfy this requirement.” (*In re J.T.* (2011) 195 Cal.App.4th 707, 717; see also *United Investors Life Ins. Co. v. Waddell & Reed, Inc.* (2005) 125 Cal.App.4th 1300, 1304 [“One is considered “aggrieved” whose rights or interests are injuriously affected by the judgment. Appellants interest [sic] “must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment””] [citing and quoting *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737].)

2. Summary of relevant Probate Code provisions

Palm filed her probate petition under section 17200, which states, in relevant part: “(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust.” Subdivision (b) defines “[p]roceedings concerning the internal affairs of a trust” to include, in relevant part: “Settling the accounts and passing upon the acts of the trustee” (§ 17200, subd. (b)(5)); “Fixing or allowing payment of the trustee’s compensation or reviewing the reasonableness of the trustee’s compensation” (§ 17200, subd.

(b)(5)); and “Appointing or removing a trustee,” or “Accepting the resignation of a trustee.” (§ 17200, subs. (b)(10), (11).)

Probate Code section 15800, which is referenced in section 17200, provides: “Except to the extent that the trust instrument otherwise provides or where the joint action of the settlor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

- (a) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division.
- (b) The duties of the trustee are owed to the person holding the power to revoke.”

“The Law Revision Commission comment to section 15800 explains that the ‘section has the effect of postponing the enjoyment of rights of beneficiaries of revocable trusts until the death or incompetence of the settlor or other person holding the power to revoke the trust. . . . Section 15800 thus recognizes that the holder of a power of revocation is in control of the trust and should have the right to enforce the trust. . . . A corollary principle is that the holder of the power of revocation may direct the actions of the trustee. . . . Under this section, the duty to inform and account to beneficiaries is owed to the person holding the power to revoke during the time that the trust is presently revocable.’ [Citation.]” (*In re Estate of Giralдин* (2012) 55 Cal.4th 1058, 1066-1067 (*Giralдин*).

Our Supreme Court has explained that section 15800 codifies the principle that “the beneficiaries’ interest in [a revocable trust] is “merely potential” and can ‘evaporate in a moment at the whim of the [settlor].’ [Citation.]” (*Giralдин*, *supra*, 55 Cal.4th at pp. 1066-1067.) “[S]o long as the settlor is alive, the trustee owes a duty solely to the settlor and not to the beneficiaries.” (*Id.* at p. 1066.) Thus, “during the settlor’s lifetime, and as long as he [or she] [is] competent, ‘the trust beneficiaries [a]re powerless to act regarding the trust’ [Citation.]” (*Babbitt v. Superior Court* (2016) 246 Cal.App.4th 1135, 1146 [citing and quoting *Giralдин*, *supra*, 55 Cal.4th at p. 1067].) “[T]he beneficiaries . . . do not have the right to petition the court concerning the internal affairs of the trust until such time as the settlor, or other person holding the power to revoke, is unable to exercise a power of

revocation, whether due to incompetence or death.” (*Giraldin, supra*, 55 Cal.4th at p. 1067.)

B. The Parties Lack Standing to Appeal the Probate Court’s Order

1. Kevin and Alison Jones lack standing to appeal

Kevin and Alison are beneficiaries of the Trust. The authorities summarized above, however, make clear that because the Trust is revocable, they have no right to act with respect to the Trust, and no legally cognizable interest in the Trust’s property during Hanson’s lifetime. Thus, their status as beneficiaries provides no right or interest that was “injuriously affected” by the probate court’s order regarding the Trust’s internal affairs.

Alison and Kevin, however, argue that even if they lack standing to appeal as beneficiaries, they nonetheless have standing based on their 30 percent interest in the Rancho Palos Verde property. According to appellants, because they jointly own the property with the Trust, they are “affected by and thereby have standing to participate in actions pertaining to trust administration to the extent it affects the [p]roperty.” Appellants cite no legal authority supporting the proposition that a party who shares ownership of real property with a trust has standing to participate in, or appeal orders related to, the trust’s internal affairs. Nor have they identified any legally cognizable right or interest that they enjoy as 30 percent owners of the property that was injuriously affected by the probate court’s order, which resolved issues pertaining to the administration of the Trust.⁶

⁶ In their reply brief, Alison and Kevin assert that the court’s decision to deny Palm’s resignation as trustee has created a “cloud on the title” of the Rancho Palos Verdes property that makes it unmarketable. Appellants appear to argue that by denying Palm her discharge, and failing to appoint Joan Adams in her place, the court’s order has left the Trust without any person who is authorized to approve a sale of its 70 percent interest in the property. The court’s order, however, clearly provides that “Petitioner Cynthia Palm [is to] remain[] . . . trustee.” Thus, Palm remains authorized to act with respect to any proposed sale of the property. The fact that Palm, rather than Adams, is currently the trustee is not a “cloud” on title.

Although we acknowledge the Trust may owe Kevin and Alison certain duties as a result of their co-tenant relationship (see, e.g., *Wilson v. S.L. Rey, Inc.* (1993) 17 Cal.App.4th 234, 242 [“Cotenants stand in fiduciary relationship to each other”]), we fail to see how this provides them standing to appeal an order regarding the Trust’s internal affairs. If Alison and Kevin believe the Trust has violated a duty owed to them as co-owners of the Rancho Palos Verde property, they may pursue their claims, as they appear to be doing, in the pending civil action. Their status as co-owners does not, however, establish that they had any right that was injured by the probate court’s orders denying Palm’s resignation request, and compelling the Trust to pay for attorneys’ fees she incurred in the *Jones* action.

2. *Tracy Jones has no standing to appeal*

Appellant Tracy Jones is the uncle of appellants Kevin Jones and Alison Jones, and the executor of David Jones’s estate. Although David’s estate previously held Alison and Kevin’s 30 percent interest in the Rancho Palos Verdes property for their benefit, Tracy transferred that interest from the estate to Alison and Kevin in April of 2014. Thus, in both his individual capacity and as executor of David Jones’s estate, Tracy currently has no right or interest in Marion Hanson’s trust or in the Rancho Palos Verdes property. Accordingly, he has no conceivable right or interest that has been affected by the probate court’s order, and thus lacks standing to appeal.

Because all of the appellants lack standing to appeal from the probate court’s order, “we have no jurisdiction to consider their appeal and do not reach the contentions which they raise and must, instead, dismiss the purported appeal.”⁷ (*In re Marriage of Tushinsky* (1988) 203 Cal.App.3d 136, 143.)

⁷ We lack jurisdiction regarding the portion of the probate court’s order awarding Palm attorneys’ fees in the *Jones* action for an additional reason: that portion of the order is not appealable. With certain exceptions not relevant here, Probate Code section 1304 makes appealable “any final order” granting or denying a petition under Probate Code section 17200. Although the court’s order found Palm is entitled to “defend” the *Jones* action “at trust expense,” it deferred any decision regarding the amount of the fees pending

DISPOSITION

The appeal is dismissed for lack of standing. The respondent shall recover her costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

KEENY, J.*

resolution of that action. Our courts have previously held that when a court “determines that a party is entitled to attorney’s fees but does not determine the amount, that portion of the judgment is nonfinal and nonappealable.” (*P R Burke Corp. v. Victor Valley Wastewater Reclamation Authority* (2002) 98 Cal.App.4th 1047, 1053; see also *Kan v. Tsang* (1948) 87 Cal.App.2d 699, 700.)