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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

Estate of CARMEN JEANETTE JONES,
Deceased.

RAYMOND P. HARRIS,

Petitioner and Appellant,

v.

TERRY HARRIS et al.,

Objectors and Respondents.

C064758

(Super. Ct. No. 09PR0047)

Raymond P. Harris, in propria persona, appeals from the probate court's dismissal of his petition for probate of will of his deceased mother, Carmen Jeanette Jones. The probate court dismissed the probate petition on the ground that the only remaining assets of the decedent were trust assets not subject to probate. This appeal seeks to relitigate prior court orders in conservatorship and trust proceedings by and against Joyce Harris and Terry Harris as trustees/conservators of Mrs. Jones's

trust, person, and estate.¹ The prior orders were the subjects of separate appeals in this court, which were consolidated for oral argument and decision only. (*Conservatorship of Jones* (Sept. 7, 2011, C062865 & C064672 [nonpub. opn.].) We will affirm the judgment (dismissal order).

FACTUAL AND PROCEDURAL BACKGROUND

On November 3, 2009, Raymond filed this case, Trinity County Superior Court No. 09PR047, a petition for probate of his mother's will, with himself as executor.

In December 2009, an opposition was filed by Joyce (Raymond's sister-in-law), on behalf of herself and her (recently deceased) husband, Terry (Raymond's brother), who served as trustees of the Carmen Jeanette Jones Revocable Trust and conservators of Mrs. Jones's person and estate.² The opposition argued there was nothing to probate, as the only asset was a residence, which was a trust asset not subject to probate. The opposition pointed out related cases:

Case No. 08PR014 (a trust case) was a June 2008 petition by Joyce and Terry (who had been appointed conservators of

¹ For clarity and ease of reference, we refer to the Harris parties by first name only.

² The parties continue to name the deceased Terry Harris as a party, though the court later appointed his wife Joyce as successor trustee. Generally, a deceased party should be substituted out of a case, but the irregularity is without consequence here, where no party claims prejudice. (Code Civ. Proc., §§ 377.41, 377.30-377.43; *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957-960; 1A Cal.Jur.3d (2006) Actions, §§ 283-285, pp. 372-376.)

Mrs. Jones's person and estate) to remove Raymond as trustee of Mrs. Jones's trust, after Raymond deeded to himself real property that was a trust asset. (*Conservatorship of Jones, supra*, C062865.) The probate court rejected Raymond's claim of interest in the property, and in April 2009 removed Raymond as trustee of his mother's trust and ruled that the real property was an asset of the mother's trust. A copy of the judgment based on the court's ruling entered October 5, 2009 is included in the record on appeal of the current action.

Case No. 07PR0017 (a conservatorship case) was Raymond's challenge to the 2007 appointment of Joyce and Terry as conservators and approval of their first accounting. When Raymond filed the current case to probate his mother's will, the conservatorship case was still pending for court approval of a final accounting by Joyce and Terry as conservators for the estate of Mrs. Jones, who died in July 2009. A copy of the final accounting is included in the record on appeal of the current action.

We affirmed the judgments/orders in case Nos. C062865 and C064672 on September 7, 2011. (See p. 2, *ante*.)

In the current action seeking probate of the will, case No. 09PR047, Raymond then filed a "PETITION FOR DECLARATORY RELIEF BY RAYMOND P. HARRIS; REQUEST FOR PRELIMINARY INJUNCTIONS." This petition sought a stay of execution or a preliminary injunction to enjoin the sale of the real property or any other trust assets pending resolution of Raymond's

accusations of misconduct by Joyce and Terry (which had already been rejected by the court in the other cases).

Joyce filed an opposition.

Raymond also filed a motion to compel discovery responses from Joyce, Terry, and Mrs. Jones's former attorney (who objected to the court's jurisdiction over her due to lack of service of summons on her).

After a hearing, the probate court, on March 16, 2010, dismissed the current case in its entirety, stating in its order, "The only assets in the estate that can be probated are the Trust Assets. Trust Assets clearly fall under Probate Code[] [sections] 5000-5003 and they are property that is not part of the Probate Estate. [¶] There is no basis for the Petition for Probate because there is no property to probate."

On our own motion (Evid. Code, § 459), we take judicial notice that the probate court approved Joyce and Terry's final accounting on the same date, March 16, 2010, as reflected in the probate court order contained in the appellate record of that case, No. C064672, clerk's transcript at page 267.³

³ A reviewing court should give the parties opportunity to comment on the propriety of judicial notice and the tenor of the matter to be noticed on the reviewing court's own motion, if the matter is of substantial consequence to the appellate opinion. (Evid. Code, § 452, subd. (d) [judicial notice of court records], § 459 [reviewing court may take judicial notice but must give parties opportunity to comment under § 455 if the matter is of substantial consequence].) Here, the order approving the final accounting is not of substantial consequence because (1) Raymond has forfeited any substantial evidence challenge (as we explain *post*), and (2) the probate

DISCUSSION

The probate court's refusal to grant an order admitting a will to probate is an appealable order. (Prob. Code, § 1303, subd. (b).) Our review, which does not turn on disputed facts, is de novo. (*Betts v. City National Bank* (2007) 156 Cal.App.4th 222, 231.)

An appellant representing himself or herself on appeal is entitled to no special consideration but will be held to the same standards as an appellant represented by an attorney. (*City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.) We presume the trial court's judgments and orders are correct, and the appellant bears the burden of overcoming that presumption by affirmatively showing prejudicial error by an adequate record. (Cal. Const., art. VI, § 13 [no judgment shall be set aside unless error has resulted in miscarriage of justice]; Code Civ. Proc., § 475 ["There shall be no presumption that error is prejudicial"]; *Maria v. Riles* (1987) 43 Cal.3d 1281, 1295 [burden is on appellant to provide adequate record to assess error].)

Although Raymond argues many factual issues dependent upon the state of the evidence in the record, he did not arrange for a court reporter to transcribe the oral proceedings in the probate court. Consequently, there is no reporter's transcript in the record on appeal, and this is a judgment roll appeal. As

court's prior order rejecting Raymond's claim to the real property is included in this record on appeal.

we said in *Estate of Kievernagel* (2008) 166 Cal.App.4th 1024, 1031: "The record on appeal does not contain a transcript of the hearing. 'In a judgment roll appeal every presumption is in favor of the validity of the judgment and any condition of facts consistent with its validity will be presumed to have existed rather than one which will defeat it. [Citation.] The sufficiency of the evidence to support the findings is not open to review. [Citation.]'"

Accordingly, Raymond has forfeited any substantial evidence review. To the extent Raymond challenges the probate court's finding that there was no property to probate because all remaining property was trust property, the contention is forfeited.

As far as can be determined from Raymond's briefs, he contends that the appointment of Terry and Joyce as conservators of Mrs. Jones was unlawful, and the probate court's rejection of Raymond's petition to remove them as conservators denied Raymond of due process. However, the 2007 appointment of the conservators and the rejection of the petition for their removal were the subjects of prior proceedings and prior appeals and have no bearing on this case. To the extent that Raymond in effect seeks to make a collateral attack on the prior appealable orders, "An appealable order once final cannot be collaterally attacked where not void on its face." (*Estate of Lee* (1981) 124 Cal.App.3d 687, 692.) Raymond fails to show that any order is void on its face. To the extent Raymond seeks to relitigate issues already decided,

he is barred by collateral estoppel, “under which a prior judgment between the same parties operates as an estoppel as to those issues actually and necessarily decided in the prior action.” (Miller v. Campbell, Warburton, Fitzsimmons, Smith, Mendel & Pastore (2008) 162 Cal.App.4th 1331, 1342.)

Raymond argues the probate petition should not have been dismissed without an accounting of trust assets. Again, a trust accounting was the subject of a prior proceeding and is not subject to collateral attack.

Raymond argues the probate court denied him due process with respect to his declaratory relief action. However, his petition for declaratory relief was in essence a request for a stay of execution of the judgment in one of the prior proceedings, which were the subject of the other appeals.

We conclude Raymond fails to show grounds for reversal.

DISPOSITION

The judgment (order) is affirmed. Respondents shall recover their costs on appeal from appellant Raymond Harris. (Cal. Rules of Court, rule 8.278(a).)

MURRAY, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.