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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

Estate of ANNA M. HICKEY, Deceased.

LARRY G. HICKEY, SR.,

Petitioner and Respondent,

v.

LINDA ALEXANDER,

Objector and Appellant.

C066166

(Super. Ct. No. 34-2007-
00540137-PR-PW-FRC)

In October 2007, Larry G. Hickey, Sr., filed a petition for probate of his late mother's will and for letters of administration. Linda Alexander filed her objection "[a]s the first born child" in November 2007. Following mediation that resulted in the parties coming to an agreement, the probate court granted the petition in March 2008. Pursuant to the agreement, objector Alexander had the right to live in the decedent's residence during the administration of the estate and

purchase it for a percentage of its assessed value. When she failed to take any action to exercise the purchase option (while continuing to live in the residence rent free), the probate court issued a November 2008 order that compelled Alexander to cooperate in the sale of the real property to a third party and denied her objections to the appraisal of the property.

The probate court assumed supervision of the property sale in February 2009. It granted a petition to confirm a sale of the property in June 2009, rejecting Alexander's various efforts in court to stop the sale. However, the buyer refused to go through with the purchase in the face of Alexander's threats, lack of cooperation with the escrow process, and refusal to vacate the property, leading the probate court to issue an order directing Alexander to vacate the residence (which she disregarded). In July 2010, the probate court granted a petition to confirm a new sale of the real property—denying Alexander's last-minute challenges—after confirming Alexander did not have the present ability to perform the terms of any overbid.¹

In September 2010, Alexander filed a notice of appeal in propria persona. It identified a "[j]udgment after court trial," listing a date of "2008 - July 21, 2010." Her opening

¹ For some reason, Alexander has included in the record a petition filed *after* her notice of appeal, in which Hickey sought to expunge a lien Alexander filed against the property in the course of successful eviction proceedings against her in late 2010. The disposition of this petition is not included.

brief indicates that her intent was to appeal from "all judgments" of the probate court. (Italics added.)

After repeated extensions of time to file an opening brief, Alexander (who continues to represent herself) at last produced one in December 2011. Even though we granted four requests for extensions of time, she did not file a reply brief by the final May 2012 deadline. She also failed to provide a copy of the record to Hickey upon filing her opening brief, as he requested under California Rules of Court, rule 8.153.²

As Hickey correctly states, Alexander "fails to identify or provide any coherent argument in her [30-page] brief." We shall therefore dismiss her appeal as to any order other than the July 2010 confirmation of sale and otherwise affirm.

DISCUSSION

As a matter of fairness to their opponents (and others with business in this court), those who choose to proceed without an attorney are not entitled to any greater degree of consideration and are expected to meet the same standards as the attorneys who appear before us. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Thus, to overcome the *presumption* that a judgment or order is correct, an appellant must *affirmatively demonstrate* the error in the judgment (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564), and supply a complete record on the point (*Foust v. San Jose*

² Further rule references are to the California Rules of Court.

Construction Co., Inc. (2011) 198 Cal.App.4th 181, 187). Pursuant to this cardinal principle of appellate procedure, an appellant must provide an argument (appearing under a heading summarizing its thesis) that does not include tangential claims unrelated to the heading, supported with relevant authorities. The brief must also include an *objectively complete* account of the pertinent facts, rather than only those favorable to the appellant, with specific citations *to the record* on each point. (*Hauselt v. County of Butte* (2009) 172 Cal.App.4th 550, 563; *Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 591, fn. 8, 593 & fn. 10 (*Imagistics Internat.*); *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) An appellant must also specify the prejudice from any error on the facts of the case. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) Failure to comply with these principles results in the forfeiture of any claim of error.

Alexander's notice of appeal is timely *only* as to the July 21, 2010 order confirming the sale of the decedent's real property. (Rule 8.104; Prob. Code, § 1300, subd. (a));³ see 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 208, p. 282 (Witkin).) Accordingly, the appealable 2008 orders admitting the decedent's 2005 will into probate pursuant to the mediation

³ Undesignated statutory references are to the Probate Code.

agreement (and appointing Hickey as executor),⁴ and ordering Alexander to cooperate with the sale of the real property to a third party (denying her objections to the appraisal) are *final* and are not subject to any reexamination for errors at this late date. (§ 1300, subds. (a) & (b); 9 Witkin, *supra*, Appeal, §§ 212-213, p. 284; *Aerojet-General Corp. v. American Excess Ins. Co.* (2002) 97 Cal.App.4th 387, 398.) The June 2009 order confirming the first attempt to sell the property is *also* final and not subject to any challenge in the present appeal.

As a result, Alexander's aspersions regarding the circumstances of the decedent's death, the authenticity of the 2005 will, the suitability of a person of Hickey's character⁵ to be an executor, the coerced nature of the mediation procedures, the supposed obstacles that thwarted her efforts to exercise her right to buy the real property (and her claim the appraisal was an inflated value), and the behavior of opposing counsel toward her in the course of those earlier proceedings *all* come too late, as does her asserted sole prayer for relief that asks for the reallocation of the estate's distribution equally between herself and another sibling to the exclusion of their brother. Conversely, the circumstances of her eviction from the property in November 2010, *after* she filed her notice of appeal, are

⁴ For which reason her repeated references to the existence of an earlier will are irrelevant.

⁵ We disregard the calumnies Alexander hurls at Hickey.

beyond the scope of the appeal. (9 Witkin, *supra*, Appeal, § 337, p. 387.)

We are thus left with the difficult task of extracting from Alexander's brief any argument that might relate to the *sole* appealable order confirming the sale of the property over her objection. The two-page recitation of significant facts and the 14-page statement of the case touch on *many* facts relating to *many* subjects generally, but neither of these provide any connection specifically between the narrated facts and *this order* (nor, for that matter, are there citations to any point *in the appellate record* where we might find the basis for almost any of these factual allegations).⁶ If there are any *intended* arguments included in these two portions of the opening brief, we deem them to be forfeited for want of separate headings. (*Imagistics Internat.*, *supra*, 150 Cal.App.4th at p. 593, fn. 10.) This leaves us with 10 pages of what apparently are arguments appearing under headings, which we will address *seriatim*:

1. "Judge's Abuse of Process": Alexander complains the various judicial officers before whom she appeared behaved more favorably toward counsel for Hickey than toward her. The only one of these within the scope of the appeal is Judge Wood, who issued the orders confirming the property's sale. He "gave the

⁶ To the extent Alexander relies on facts *outside* the appellate record, they are beyond the scope of review on appeal. (9 Witkin, *supra*, Appeal, § 334, p. 385.)

impression he wanted these hearings to be resolved yet when I brought a lender to Court to prove I was pre-approved for a loan, it did not matter. Even though [Judge] Wood and [opposing counsel] discussed agreeing to sell mother's house to [me] for \$81,950, it never came to fruition because [opposing counsel] wanted to micromanage the real estate transaction. She is a lawyer, not a real estate agent. They [(the antecedent for which is unclear)] breached our email contract by NOT selling mother's house to [me] even though [I] was consistently the highest bidder."

As our quotation demonstrates, Alexander did not provide any citations to the record in support of these factual representations. We do not discern any such "facts" in the proceedings resulting in the *July 2010 order* at issue on appeal. In the course of the proceedings relating to the June 2009 order approving the previous sale of the property, Alexander did submit a purported preapproval of financing as one part of her volley of unsuccessful challenges to the sale. However, any judicial error in disregarding her status as being possibly preapproved for a loan is not subject to review at this point. Furthermore, Judge Wood was willing to order a sale of the property to her as late as a hearing in December 2009, if she provided proof of financial ability to perform. As noted above, Judge Wood found that she had failed to provide any similar proof as of the time of the hearing on the *July 2010 order*

confirming the sale to a third party, and on appeal she does not cite to any evidence *in the record* to the contrary.

We thus do not discern any "abuse of process" in connection with disregarding a proffer of evidence of preapproval.

Alexander also has failed to cite any evidence *in the appellate record* of any e-mail contract (the terms of which are not specified) that could have been "breached" even in the absence of any proof of her ability to perform. She has thus forfeited any argument she intended under this heading.

2. "Financial Irresponsibility and Criminal Conviction": To the extent Alexander is arguing that Hickey was not qualified to be executor because of purported defects in character and purported mistreatment of the decedent, this issue is not within the scope of the present appeal. To the extent there are other arguments unrelated to this heading, they are forfeited and also appear to be outside the scope of this appeal (as they again relate to the existence of an earlier will, the validity of the mediation agreement, the court's 2008 order rejecting her objections to the property's appraisal and directing her to cooperate in a sale of the property to a third party, the unlawful detainer judgment obtained against her after she filed her notice of appeal, and other factual matters lacking any citations to the record that are entirely irrelevant to the July 2010 order).⁷

⁷ Among the claims forfeited for being unrelated to the heading is an assertion of lack of notice of an *unspecified* ex parte

3. "Abuse of Process": Again, there are claims that dispute the legitimacy of the probated will, assert the coerced nature of the order to mediate, and contend both Hickey and his attorney wrongfully thwarted Alexander's earlier efforts to purchase the residence (none of which relate to the July 2010 order that found she did not have the ability to perform the terms of any bid competing with the approved sale). Again, we note it is too late to pursue these claims because they relate to orders long since final.

4. "Accepted Declarations": This heading appears without any text beneath it. We therefore do not need to respond to it.

5. "Accord and Satisfaction": Alexander does not make any attempt to connect the three abstract legal principles she recites with the order at issue in this appeal. As a result, we do not need to respond to whatever argument she might have intended.

6. "Accounting": Alexander does not identify the relevance of these legal principles to the order at issue, which did not involve the issue of an accounting. We accordingly do not need to respond to whatever argument she might have intended.

hearing (which is also forfeited for want of citations to the record or a demonstration of prejudice). This may be a hearing on July 14, 2010, at which Judge Wood *specifically told* Alexander that her complaints about lack of notice did not result in any prejudice to her because he was not making any substantive rulings at that time and would be continuing the matter.

7. "Assumption of Duty": Alexander appears to be contending that Hickey has breached a tort duty to her that resulted in injuries to her. Yet again, she does not identify the relevance of these principles to the sole order at issue. We therefore do not need to respond to it.

Conclusion

In short, any reasonable attorney would have concluded that Alexander's appeal is completely without merit. We also believe the record *compels* an inference of a subjective intent to pursue this appeal solely for purposes of harassment. We would thus be warranted in finding this to be a frivolous appeal. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) It is proper to sanction a self-represented party for pursuing a frivolous appeal. (*Bistawros v. Greenberg* (1987) 189 Cal.App.3d 189, 193.) Hickey did not request sanctions on this basis, but we are authorized to consider the issue of sanctions on our own motion. (Rule 8.276(a).) However, it is preferable to leave the matter of holding Alexander responsible for the costs of her behavior to the probate court in approving the final distribution of the proceeds of the sale of the real property (if ever consummated). (Cf. *Rudnick v. Rudnick* (2009) 179 Cal.App.4th 1328, 1334-1335 [probate court's broad equitable authority over trusts authorizes charging the legal costs of unfounded challenge against the beneficial interest of only the contestant].)

DISPOSITION

The appeal is dismissed as to any order other than the July 2010 order approving the sale of the residence. The July 2010 order is affirmed. Hickey shall recover his costs of appeal. (Rule 8.278(a)(1), (2).)

BUTZ, J.

We concur:

RAYE, P. J.

MAURO, J.