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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Nevada)

Estate of DAISY ELLEN GREGORY, Deceased.

DON PATTERSON, as Special Administrator, etc.,

Petitioner and Respondent,

v.

BEVERLY SEGHEZZI,

Objector and Appellant;

AMOS SEGHEZZI,

Appellant.

C067902

(Super. Ct. No. P14966)

FLOYD HUGGINS, Individually and as Special
Administrator, etc.,

Plaintiff

v.

BEVERLY SEGHEZZI et al.,

Defendants.

(Super. Ct. No. 74882)

This is an appeal of an order admitting the will of Daisy Ellen Gregory to probate. Appellant Beverly Seghezzi is the niece of Gregory's husband, who preceded Gregory in death. Seghezzi contends that the trial court erred in sustaining respondent's demurrer to Seghezzi's will contest and objections to the probate petition on standing grounds without leave to amend.¹

We shall conclude Seghezzi should be allowed to amend her will contest to allege, if she can, that she would be an intestate heir, and would receive a larger share of the decedent's estate if the decedent died intestate than she would receive under the will.

FACTUAL AND PROCEDURAL BACKGROUND

Daisy Ellen Gregory, the decedent, was married to Orville Gregory for 68 years. They had no children. Orville Gregory died in April 2008, and his estate passed to the decedent. The decedent died seven months later, in November 2008. The decedent executed a will on June 21, 2001, that divided her estate between various persons and entities, including, as is relevant, a 14 percent interest to each of her four nieces and nephews (Don, Ronnie, and Lonnie Patterson, and Barbara Ross) and an 8 percent interest to Orville Gregory's niece, Seghezzi.²

Seghezzi's will contest and objections to the probate petition alleged she was an 8 percent beneficiary of the decedent's estate under the will filed for probate, dated June 21, 2001. She objected to the probate petition on several grounds. As is relevant, she alleged that the decedent revoked her will prior to her death and distributed her entire estate to Seghezzi. This allegation is based on Seghezzi's statement that the decedent

¹ Seghezzi's husband, Amos, is also an appellant. Our reference to Beverly Seghezzi as the appellant and objector includes her husband Amos.

² Floyd Huggins initiated the probate of the decedent's will as the administrator. Huggins died, and Don Patterson, the decedent's nephew, was appointed interim special administrator.

added Seghezzi and Amos Seghezzi as joint account holders on her four certificates of deposit and on her checking account.³ Seghezzi stated that the decedent knew that holding title in joint tenancy was a way to transfer assets after her death, and that the decedent had decided not to leave any of the funds in the accounts to her own niece or nephews. Seghezzi stated that the decedent told her that she did not plan to leave anything as provided in her will. According to Seghezzi, the decedent told her some of the will beneficiaries were people she had not seen for years, some were deceased, some had already been provided for, and some she did not like.

The will contest and probate petition proceeding were consolidated below with an action by the beneficiaries and executor of the decedent's will against Seghezzi. That action is a complaint for damages alleging, inter alia, constructive fraud, breach of fiduciary duty, and financial elder abuse. It alleged that the decedent suffered from dementia since before her husband's death seven months prior to her own. It alleged that one month after the decedent's husband died, Seghezzi moved the decedent from her home in Kansas and installed her in an assisted living facility in Grass Valley, California. It further alleged that Seghezzi asserted undue influence in inducing the decedent to give Seghezzi a durable power of attorney, and that the decedent was not competent to execute the power of attorney. It also alleged that Seghezzi added herself and her husband as joint account holders on the decedent's checking, saving, and certificate of deposit accounts, which together held approximately \$480,000.

Respondent demurred to Seghezzi's will contest and objection to probate on the grounds that Seghezzi had no standing to object, that the will contest stated no facts to support a claim of revocation, and that the will contest was facially ambiguous in that it failed to allege the date, time, place, manner, and circumstance of the revocation.

³ These facts are not alleged in the will contest or objection to the petition to probate the will, but are stated in Seghezzi's declaration in support of these pleadings.

Specifically regarding Seghezzi's standing to object, respondent argued Seghezzi must show she has an interest that would be impaired or defeated by the contested will. Respondent asserted that if the will were invalid Seghezzi would be entitled to either the same 8 percent given her under a prior will, or to nothing if the decedent died intestate. Either way, if the will were invalid Seghezzi's interest would not be impaired.

Seghezzi's response to this argument was that her 8 percent interest in the estate under the will gave her a right in the estate of the decedent, and that her joint tenancy in the assets of the decedent gave her a property right in or claim against the estate.

The probate court sustained the demurrer without leave to amend on the ground Seghezzi had no standing to contest the will. The court reasoned that Seghezzi would not have an interest in the decedent's intestate estate because she was not the decedent's niece, but her predeceased husband's niece. Also, the decedent's prior will left Seghezzi the same 8 percent interest in the decedent's estate. Therefore if the final will was invalid and the prior will became effective, there would be no change in Seghezzi's interest.

Seghezzi appealed from the order admitting the will to probate. Respondent has not filed a brief.

DISCUSSION

Seghezzi now argues she has standing to contest the will because if the decedent died intestate, she would be entitled to a portion of the intestate estate pursuant to Probate Code section 6402.5, subdivision (b)(3). Seghezzi did not raise this argument below.⁴

⁴ Seghezzi also argues that: (1) without the order admitting the decedent's will to probate, there would be no vehicle for others to pursue an action against her, and (2) if the will is probated she will incur monetary damages in defending the joint accounts. To the extent this is an assertion of other grounds for standing to contest the will, the argument fails. The court overruled Seghezzi's demurrer to the second amended complaint for damages as to some causes of action. The complaint for damages, although consolidated with the probate proceeding, is not dependent on either the will contest or the probate of the will. The complaint for damages determines *what* is in the decedent's

We consider it nevertheless in determining whether Seghezzi should be allowed leave to amend, because we are not limited by contestant’s theory, but determine de novo whether the contest is sufficient to allege standing under any legal theory. (See *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 870 [“In assessing whether plaintiffs should be allowed leave to amend, we determine de novo whether the complaint states facts sufficient to state a cause of action under any possible legal theory. [Citation.] We are not limited to plaintiffs’ theory of recovery or ‘ “form of action” ’ pled in testing the sufficiency of the complaint.”].)

Probate Code section 6402.5, subdivision (b), provides:

“For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent’s estate attributable to the decedent’s predeceased spouse passes as follows:

“[¶] . . . [¶] (3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.”

This code section indicates Seghezzi may be entitled to a portion of the decedent’s estate if the decedent died intestate. However, Seghezzi alleged neither her right to an interest through intestacy, nor the percentage of any such interest.

estate. The probate proceedings determine *how* the estate is distributed. For the same reason, Seghezzi’s expenses in defending the joint accounts does not make her an interested person in a will contest. The resolution of the validity of the joint accounts determines what is in the decedent’s estate, but not how the estate is distributed.

A petitioner in a probate proceeding must have standing, which means the petitioner must allege sufficient facts to demonstrate she is an interested person. (Prob. Code § 1043; *Estate of Weber* (1991) 229 Cal.App.3d 22, 25, fn. 4.) A will contestant is an interested person if she shows her share of the distribution of the estate will be increased if the will contest is successful. (*Estate of Weber, supra*, at p. 25, fn. 4.)

Where a will contestant's standing is challenged, the court may hold an evidentiary hearing on the standing question before proceeding with the trial of the contest. (*Estate of Lind* (1989) 209 Cal.App.3d 1424, 1434-1435.) Here, there was no evidentiary hearing on the standing issue because the court held as a matter of law that Seghezzi did not have standing and there was no reasonable possibility that the pleading could be amended to state a cause of action.

Because “ ‘only an interested person may properly be a contestant’ [citation], appellant must allege his standing as an interested person. That is, he must allege he would take under another will or by intestacy in the event of a successful contest to the purported will.” (*Estate of Lind, supra*, 209 Cal.App.3d at pp. 1431.) Seghezzi has alleged only that she is an interested person within the meaning of Probate Code section 48 and that she is entitled to an 8 percent interest under the will. This is insufficient. She must allege she would benefit through intestacy over and above her 8 percent interest under the will.

Because it appears that Seghezzi may obtain some interest in the estate if it is determined that the decedent died intestate, we shall reverse and remand to allow Seghezzi to amend her will contest to allege that she will benefit from a will contest by obtaining a greater interest if the decedent died intestate. If an evidentiary hearing is held on this issue, it will be Seghezzi's burden to prove that her share of the distribution of the estate will be increased if the will contest is successful.

The probate court also reasoned that if the decedent's prior will were to become effective upon a determination that the final will was revoked, Seghezzi would receive

the same percentage interest in the estate, and would have no standing to contest the will. We make no determination as to whether the decedent's estate would pass by a prior will or by intestacy in the event the final will should be declared invalid. The doctrine of dependent relative revocation, upon which any argument that the prior revoked will would become effective must be grounded, is a doctrine “ ‘designed to carry out the probable intention of the testator when there is no reason to suppose that he intended to revoke his earlier will if the later will became inoperative.’ ” (*Estate of Anderson* (1997) 56 Cal.App.4th 235, 243.)

Whether the decedent intended that the earlier will would become effective upon revocation of the final will is a factual determination to be made in an evidentiary hearing.

DISPOSITION

The judgment (order) is reversed and remanded. The probate court shall allow appellant to amend the will contest in accordance with the views expressed herein. Appellant shall bear her own costs on appeal.

BLEASE, J.

We concur:

RAYE, P. J.

DUARTE, J.