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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

Estate of ERIC WILLIAMS, Deceased.

C078344

KATHRYN WILLIAMS,

Petitioner and Respondent,

(Super. Ct. No.
39201400315316PRSPSTK)

v.

KEVIN B. WILLIAMS,

Objector and Appellant.

Estate of ERIC WILLIAMS, Deceased.

C079184

KEVIN B. WILLIAMS,

Petitioner and Appellant,

(Super. Ct. No.
39201400317915PRLASTK)

v.

KATHRYN WILLIAMS,

Real Party in Interest and Respondent.

These consolidated appeals arise out of the death of Eric Williams intestate on June 28, 2014. His brother, Kevin B. Williams, in propria persona, appeals from a court order granting Kathryn Williams' spousal property petition (C078344), and another court order in a related case (C079184) denying Kevin's petition for letters of administration and authorization to administer the decedent's estate on the basis that it was mooted by the granting of the spousal property petition in the first action. Kevin raises multiple issues on appeal: (1) whether, under the evidence presented, the intestate transfer of assets to Kathryn required a written agreement between her and the decedent regarding the division of community property or quasi-community property assets; (2) whether the decedent's siblings were interested parties in the original action; (3) whether a statement of decision was required after the court in the second action denied Kevin's petition; and (4) whether the court erred in granting an oral motion to quash Kevin's subpoena on Robert Vanderselt in the second action.

Kevin has elected to proceed on a clerk's transcript. (Cal. Rules of Court, rule 8.121.) Thus, the appellate record does not include a reporter's transcript of the hearings in these matters. This is referred to as a "judgment roll" appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.) On the face of this record, no error has been established. Accordingly, we affirm the trial court's orders.

I. BACKGROUND

A. Kathryn's Spousal Property Petition (C078344)

The limited record we have establishes that, on August 26, 2014, Kathryn filed a spousal property petition pursuant to Probate Code section 13650¹ in San Joaquin County Superior Court case number 39201400315316PRSPSTK. She sought a court order under

¹ Undesignated statutory references are to the Probate Code.

section 13500 determining that certain property passed to her as the surviving spouse without the need for probate administration, and confirming that certain property belonged to her as the surviving spouse under sections 100 and 101.²

The court held a hearing on the petition on December 17, 2014. On January 8, 2015, the court granted Kathryn's petition and listed the property that passed to her without the need for probate administration and the property that was confirmed as hers. Kevin timely appealed.

B. Kevin's Petition for Letters of Administration and Authorization to Administer the Decedent's Estate (C079184)

On October 30, 2014, Kevin filed a petition for issuance of letters of administration and for authorization to administer the decedent's estate under the Independent Administration of Estates Act, section 10400 et seq., in San Joaquin County Superior Court case number 39201400317915PRLASTK. He amended the petition on January 16, 2015, and subsequently filed a request for a statement of decision. On March 10, 2015, the court held a court trial on the petition during which it requested Kevin to provide an offer of proof. The court issued a minute order denying the petition "after lengthy discussion." The court stated that among the reasons for its decision was that Kevin's petition was moot because of the spousal property petition granted in the related case. The order also stated the court granted an oral motion to quash a subpoena served on "Attorney R[.] Vanderselt." Kevin timely appealed.

² Section 100, subdivision (a) provides: "Upon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent." Section 101, subdivision (a) provides: "Upon the death of a married person domiciled in this state, one-half of the decedent's quasi-community property belongs to the surviving spouse and the other half belongs to the decedent."

C. *Consolidation*

On June 23, 2015, we granted appellant's motion for consolidation of the appeals in C079184 and C078344.

II. DISCUSSION

A. *Principles of Appellate Review*

Kathryn did not file a respondent's brief. Consequently, California Rules of Court, rule 8.220(a)(2) states this court "may decide the appeal on the record, the opening brief, and any oral argument by the appellant." "Nonetheless, [the appellant] still bears the 'affirmative burden to show error whether or not the respondent's brief has been filed,' and we 'examine the record and reverse only if prejudicial error is found.' [Citation.]" (*Smith v. Smith* (2012) 208 Cal.App.4th 1074, 1078.)

Further, "[i]t is axiomatic in appellate review that a judgment of a lower court is presumed correct. [Citations.] This presumption has special significance when, as in the present case, the appeal is based upon the clerk's transcript. 'It is elementary and fundamental that on a clerk's transcript appeal the appellate court must conclusively presume that the evidence is ample to sustain the findings, and that the only questions presented are as to the sufficiency of the pleadings and whether the findings support the judgment.' " (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) In a judgment roll appeal, we do not presume the record contains all matters material to a determination of the points on appeal unless the asserted error "appears on the face of the record." (Cal. Rules of Court, rule 8.163; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521.) These restrictive rules of appellate procedure apply to Kevin even though he is representing himself on appeal. (See *Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.)

B. *Kathryn's Spousal Property Petition*

Kevin contends a written agreement should have been required for the court to transfer property to Kathryn based on her spousal property petition. But there is no

indication he raised this argument in opposition to the petition. Accordingly, it is forfeited on appeal. (See *Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422 [“It is settled that points not raised in the trial court will not be considered on appeal”].)³

Kevin also argues he and his siblings should not have been denied standing to object to Kathryn’s petition because they were interested persons affected by the proceedings. However, the record Kevin has provided does not even reflect any rulings on this issue. As such, he has failed to demonstrate error.⁴ (See *National Secretarial Service, Inc. v. Froehlich, supra*, 210 Cal.App.3d at p. 522 [“The limited record before us is silent regarding all of these issues. As such, no error has been affirmatively shown and the trial court’s ruling must be presumed to be correct”].)

³ Further, there is no merit to his claim of error. Kevin cites section 13651, which requires a petition under section 13650 to set forth specific information, including any applicable “written agreement[s] between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.” (§ 13651, subd. (a)(2), (4).) Kathryn’s written petition states no such agreement existed. Kevin also contends there was an improper transmutation of separate property to community property without a written instrument. (See Fam. Code, § 852.) This argument is unsupported by the record as well. “Subject to [Family Code] Sections 851 to 853, inclusive, married persons may by agreement or transfer, with or without consideration, do any of the following: . . . [¶] . . . (b) Transmute separate property of either spouse to community property.” (Fam. Code, § 850.) Kathryn’s petition asserted that all of the listed property was always community property. Therefore, on this record, we cannot conclude the trial court erred in not requiring a written agreement to transfer the property.

⁴ At oral argument, Kevin argued for the first time that “[d]uring the pendency of letters of administration, a spousal property petition should not have been granted.” We lack authority for this argument and, like the other arguments raised in this appeal, an indication it was considered by the trial court. Moreover, we reject it as untimely. (See *Estate of McDaniel* (2008) 161 Cal.App.4th 458, 463 [“ ‘[C]ontentions raised for the first time at oral argument are disfavored and may be rejected solely on the ground of their untimeliness’ ”].)

C. Kevin's Petition for Letters of Administration and Authorization to Administer Decedent's Estate

Kevin admits in his opening brief that the hearing on his petition for letters of administration and authorization to administer the decedent's estate took less than a day. Under these circumstances, if a statement of decision was even required, "the statement of decision may be made orally on the record in the presence of the parties." (Code Civ. Proc., § 632.) Because Kevin has not supplied a reporter's transcript, we must presume this is what occurred and that the trial court followed the applicable law. (See *People v. Sullivan* (2007) 151 Cal.App.4th 524, 549 ["[T]he defendant further bears the burden to provide a record on appeal which affirmatively shows that there was an error below, and any uncertainty in the record must be resolved against the defendant".]) Accordingly, we find no error with respect to the form of the ruling.

D. Motion to Quash

Kevin also challenges the trial court's grant of the oral motion to quash. Without a reporter's transcript, this record contains no information regarding the basis for the motion or the basis for the court's ruling. Thus, no error appears on the face of the record.

III. DISPOSITION

The orders of the trial court are affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

/S/

RENNER, J.

We concur:

/S/

BUTZ, Acting P. J.

/S/

HOCH, J.