

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JAQUELINE B. REEDY, Individually and as  
Trustee, etc.,

Plaintiff and Respondent,

v.

TODD BUSSELL,

Defendant and Appellant.

D059378

(Super. Ct. No. GIN034571)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy M. Casserly, Judge. Appeal dismissed.

This action was initiated by Jacqueline B. Reedy (Reedy) in her capacity as the trustee of the Helen Chamness Bussell Family Trust (the trust) and in her individual capacity as a beneficiary of the trust, against, among others, Todd Bussell, a beneficiary of the trust. The action sought to quiet title to a 131-acre ranch (the ranch) owned by the trust and to partition the ranch by sale. The court entered an interlocutory judgment quieting title in the trust and ordering a partition by sale.

Bussell appealed the interlocutory judgment, asserting (1) the judgment violated the spendthrift provision of the trust and Probate Code sections 15300 and 15301; (2) the court erred by including an award of attorney fees and costs in the judgment; and (3) the court erred in awarding Reedy the costs of maintaining, preserving and marketing the property. We affirmed the interlocutory judgment in a nonpublished opinion, *Reedy v. Bussell* (Jan. 6, 2010, D054569) (*Reedy I*).

Following remand, Reedy brought a motion for an order confirming the sale of the property to the City of San Marcos in the amount of \$6.5 million. The motion asserted that the sale was upon terms and a price that were the best that could be obtained.

Bussell opposed the motion, asserting (1) the process which culminated in the sale was unfair in that the sale price was based on an appraisal that was prepared by an appraiser who was retained and paid by the proposed purchaser of the property; (2) the appraisal was 18 months old; (3) Reedy had not served the motion on all parties who appeared in the action; and (4) if the motion was granted, he requested that the proceeds be deposited with the court pending resolution of the proper distribution of the proceeds from the sale

The court granted the order confirming the sale.

Bussell appealed that order, asserting that (1) there was an ambiguity in the order confirming sale because it permits the escrow holder to disburse the net sale proceeds without a future court order concerning distribution of the sale proceeds; and (2) paragraph 4 of the order confirming the sale violated established case law and this court's

holdings in *Reedy I*. On July 15, 2011, we affirmed the order confirming the sale of the ranch. (*Reedy v. Bussell* (July 15, 2011, D058068 [nonpub. opn.]) (*Reedy II*.)

In conjunction with the motion to confirm the sale of the ranch, Reedy also sought to recover costs of maintaining the ranch and attorney fees incurred in prosecuting this proceeding. Bussell opposed the motion, asserting the maintenance expenses were not for the common benefit of the ranch owners.

In June 2010 the court (the Honorable William S. Dato), after confirming the sale of the ranch, granted Reedy's request for attorney fees, finding they were for the common benefit of the ranch owners and also finding the maintenance costs were for the common benefit of the ranch owners. Bussell had requested discovery on the amount of the expenses and, due to a lack of documentation as to those expenses, Judge Dato denied the motion for costs without prejudice. While Bussell appealed that portion of the order confirming the sale of the ranch, he did not appeal the finding that the maintenance expenses were for the common benefit of the ranch owners.

Reedy renewed her motion to recover such expenses, documenting the amount of expenses incurred. Bussell opposed the motion, again asserting the expenses were not for the common benefit of the ranch owners. On January 7, 2001, the court (the Honorable Timothy M. Casserly) granted Reedy's motion, finding she was entitled to recover \$280,236.62 in costs and expenses. Moreover, Judge Casserly found that because Judge Dato had previously made a "finding of fact" that the expenses were incurred for the common benefit, Bussell was precluded from relitigating that issue.

On February 15, 2011, Bussell filed his notice of appeal from Judge Casserly's order.

On appeal, Bussell asserts the court erred in granting Reedy's renewed motion because (1) the court failed to exercise its discretion to determine whether the costs were for the common benefit of the beneficiaries of the trust; and (2) the award of costs was not supported by substantial evidence that they were incurred for the common benefit.

We conclude this appeal is untimely because Bussell did not appeal from Judge Dato's order finding the maintenance expenses were for the common benefit of the ranch owners, the only issue he raises on this appeal. Accordingly, the appeal is dismissed.

#### FACTUAL AND PROCEDURAL BACKGROUND

##### A. Introduction

Reedy is the trustee of the Helen Charmless Bussell Family Trust - Initial Trust and Gift Trust, Dated 7/30/1982; and she is also the beneficiary of the Initial Trust and co-beneficiary of the Gift Trust. One of her duties as trustee is to maintain and preserve trust assets, including the ranch. Substantial acreage of the ranch is dedicated to avocados, oranges and grapefruit. Approximately 10 to 20 acres are dedicated to avocados, about 40 acres are dedicated to oranges, and about 40 acres are dedicated to grapefruit.

Reedy used her own money to maintain and preserve the ranch. She did so to preserve the salability of the ranch and because the purchase and sale agreement and escrow instructions dated April 14, 2009 (Agreement) at paragraph 15.5 requires that "prior to the close of escrow, Reedy shall, at Reedy's own cost and expense entirely,

maintain the Property (or cause the Property to be maintained) in the same condition and repair existing as of the opening of the escrow." That sale to the San Marcos Redevelopment Agency was ordered confirmed and this court affirmed such order on appeal in *Reedy II*.

For the years 2007 through 2009, Reedy spent a total of \$280,236.62 to maintain and preserve the ranch. In support of her motion to recover such expense, Reedy identified on a yearly basis the net income generated by the sale of fruit minus the expense of harvesting, transporting and marketing such produce. The money spent to maintain and preserve the ranch were personal funds of Reedy for which she has not been reimbursed by the trust because it has no money.

The San Marcos Redevelopment Agency agreed to purchase the ranch in early 2009 for \$6.5 million, all cash, subject to this litigation being determined in favor of Reedy and judgment becoming final. The Agreement was amended to allow the redevelopment agency to extend the escrow until August 2011.

#### B. Motion for Maintenance Expenses

On December 11, 2008, the trial court (the Honorable Lisa C. Schall) entered an amended interlocutory judgment quieting title in and ordering partition by sale of the ranch. That judgment appointed a referee to handle the sale of the ranch.

In May 2010 Reedy filed a motion for an order confirming the sale of the ranch to the San Marcos Redevelopment Agency. At the same time, she also sought attorney fees and the maintenance expenses pursuant to Code of Civil Procedure (all further

undesignated statutory references are to the Code of Civil Procedure) section 874.010, asserting that such fees and expenses were for the common benefit of the ranch owners.

Bussell opposed the motion, arguing that the attorney fees and maintenance expenses were not for the common benefit and that Reedy had not demonstrated that they were reasonable.

In ruling on the motion, the court (Judge Dato) found that "[b]ecause she filed suit in order to quiet title and obtain partition of the ranch by sale, the Court finds it is without question that Reedy's efforts to seek resolution as to the ownership of the ranch and then maintain the ranch for purposes of sale by partition pursuant to this Court's order was for the common benefit of the ranch owners."

The court then stated, "The remaining issue is whether the costs incurred were reasonable. With respect to the attorney's fees, the Court [] finds they are reasonable and sufficiently supported. Regarding the ranch maintenance costs, while Reedy has submitted a declaration with an attached one-page chart delineating the costs she incurred for the upkeep of the ranch, she has not provided any supporting evidence such as invoices or receipts. At a minimum, Bussell is entitled to relevant discovery on the expense issue. Accordingly, while the maintenance expenses sought by Reedy seem reasonable, the motion is denied without prejudice as to these costs at this time."

Bussell appealed from that portion of the order confirming the sale of the ranch. However, Bussell did not appeal that portion of the order finding the maintenance expenses were incurred for the common benefit of the ranch owners.

On October 6, 2010, Reedy filed a new motion seeking an award of the \$280,236.62 in expenses.

Bussell filed an opposition to Reedy's motion. Bussell again argued that the maintenance expenses were not for the common benefit of the ranch owners.

On January 10, 2011, the court (Judge Casserly) issued its ruling, by minute order, granting Reedy's motion for \$280,232.62 as costs of the partition. With regard to the common benefit issue, the trial court stated:

"In a ruling issued on 6/17/10, Judge Dato previously ruled that 'Reedy's efforts to seek resolution as to the ownership of the ranch and then maintain the ranch for purposes of sale by partition pursuant to this Court's order was for the common benefit of the ranch owners.' To the extent that Defendant is attempting to relitigate the issue of whether such maintenance expenses were for the common benefit of the ranch owners, this is an improper request for reconsideration. A finding of fact as to this issue has already been made."

On February 15, 2011, Bussell filed his notice of appeal from Judge Casserly's order.

## DISCUSSION

Whether a judgment or order is appealable is governed by statute. (§ 904.1; *Garau v. Torrance Unified School Dist.* (2006) 137 Cal.App.4th 192, 198 ["In general, the right to an appeal is entirely statutory; unless specified by statute no judgment or order is appealable."].)

Interlocutory or partial judgments under certain circumstances may be appealable. (§ 904.1, subd. (a)(1)(A), (8), (9) & (11).) A trial court judgment is "interlocutory," if

further judicial action is essential to a final determination of the parties' rights. (*Knodel v. Knodel* (1975) 14 Cal.3d 752, 761; *Papadakis v. Zelis* (1992) 8 Cal.App.4th 1146, 1149.)

Section 904.1, subdivision (a)(2) states that "[a]n appeal, other than in a limited civil case, may be taken from . . . an order made after a judgment made appealable by paragraph (1)." Section 904.1, subdivision (a)(1) provides that "[a]n appeal, other than in a limited civil case, may be taken from . . . a judgment, except (A) an interlocutory judgment, other than as provided in paragraphs (8), (9) and (11) . . . ."

Section 904.1, subdivision (a)(9) states that an appeal may be taken "[f]rom an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made."

In *Solis v. Vallar* (1999) 76 Cal.App.4th 710, 712-713, the Court of Appeal explained that an order confirming a partition sale is appealable because (1) the underlying judgment is appealable under section 904.1, subdivision (a)(1); (2) the order involves issues different from those addressed in the underlying judgment; and (3) the order affects the judgment or relates to it by enforcing it or staying its execution.

Here, just as the order confirming the sale was appealable (and Bussell did appeal that order), that portion of Judge Dato's order also finding that Reedy's expenses incurred to maintain the ranch were for the common benefit was also appealable. The underlying interlocutory judgment was appealable under section 904.1, subdivision (a)(1) & (9) and, in fact, was appealed. Judge Dato's order involves the issue of Reedy's entitlement to compensation for the expenses she incurred to maintain the ranch, an issue different from those determined in the interlocutory judgment, and Judge Dato's order affects the

judgment or relates to it by giving effect to its terms. In fact, the interlocutory judgment itself ordered that proceeds from the sale of the ranch be applied, among other things, to "compensate [Reedy] for such expenses which she has incurred to maintain, preserve, and market the Subject Property . . . ."

Thus, Judge Dato's finding the maintenance expenses were for the common benefit of the ranch owners was an appealable order and, if Bussell sought to challenge that finding, he was required to file an appeal from that order. As Judge Casserly noted, Bussell's attempt to relitigate Judge Dato's finding was an improper motion for reconsideration as the common benefit issue had already been decided by Judge Dato's ruling. This appeal was not filed until February 15, 2011, more than 180 days after the entry on June 17, 2010, of Judge Dato's order and, therefore, is not timely. (Cal. Rules of Court, rule 8.104(a)(3).)

Bussell asserts that Judge Dato's order was not appealable because Judge Dato's finding on the common benefit issue was merely a "passing comment" or "observation" and "was neither a ruling nor a finding." However, this ignores the plain language of the order that Judge Dato was making an express finding on this issue, leaving only the amount of the costs to be litigated at a later date.

A postjudgment order that affects an earlier judgment is appealable where it "relates directly to the enforcement of a judgment." (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 654.) Judge Dato's order meets this test as the common benefit issue relates directly to enforcement of the interlocutory judgment of partition

which, as noted, *ante*, provided for an award of maintenance costs to Reedy from the proceeds of a sale of the ranch.

Bussell asserts that Judge Dato's order was not appealable because he was not an "aggrieved party" as he was the prevailing party on the motion because it was denied without prejudice. That may be the case as to the issue of the amount of the maintenance costs to be awarded, the only portion of Reedy's motion that was denied. However, Bussell is not appealing that determination made by Judge Casserly. Rather, he is only attacking Judge Dato's finding that the maintenance expenses were for the common benefit of the ranch owners, a finding made in favor of Reedy.

Finally, Bussell asserts that certain language from our opinion in *Reedy I* supports the proposition that Judge Dato's order was not an appealable order. This contention is unavailing.

In *Reedy I*, Bussell, in appealing from the interlocutory judgment of partition, asserted that a portion of that order that provided that Reedy was to be compensated for her expenses in maintaining the ranch from the proceeds of its sale violated the rule that an award of costs may not be included in an interlocutory judgment of partition.<sup>1</sup> In response, we concluded that contention was premature because "Reedy has not applied for, and the court has not awarded, such expenses. When and if Reedy brings an application for reimbursement of expenses she has incurred to 'maintain, preserve, and market' the ranch, [Bussell] will be entitled to argue certain expenses are not recoverable

---

<sup>1</sup> Bussell has requested that we take judicial notice of our decision in *Reedy I*. On February 2, 2012, we granted the request for judicial notice.

and challenge by appeal any award thereafter. This issue is also not before us on this appeal." (Reedy I, p. 9.)

Bussell interprets this language to mean he was not required to file an appeal prior to an actual award of maintenance costs. However, nothing in that language holds that Bussell could not challenge the court's finding that the fees and costs were for the common benefit of the ranch owners until the amount of fees has been determined.

#### DISPOSITION

The appeal is dismissed. Reedy shall recover her costs on appeal.

NARES, Acting P. J.

WE CONCUR:

McINTYRE, J.

AARON, J.