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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Conservatorship of the Person and Estate of
MARGARET E. MCMAHON.

D059472

MARGARET LEBLANC, as Conservator,
etc.,

(Super. Ct. Nos. P188414, P190708)

Petitioner and Respondent,

v.

ALANNA MCMAHON,

Objector and Appellant;

GERALDINE MCMAHON,

Claimant and Respondent.

APPEAL from an order of the Superior Court of San Diego County, Julia Craig Kelety, Judge. Affirmed.

Pro se appellant Alanna McMahon challenges the probate court's order finding that she did not repay a loan from and committed financial abuse against her elderly

mother, and authorizing her sisters to deduct \$440,000 from her share of a trust established by the mother. Although McMahan's appellate briefing does not clearly articulate claims of error, she appears to argue that the probate court's order must be reversed because the probate judge was biased against her, and there was insufficient evidence to support the order. We reject these arguments on procedural and substantive grounds, and affirm the challenged order.

BACKGROUND

Alanna McMahan and Margaret LeBlanc are both daughters of Margaret E. McMahan (deceased; hereafter, Mother). After Mother suffered a debilitating stroke at the age of 92, the probate court appointed LeBlanc as conservator of Mother's estate.

LeBlanc filed a petition against McMahan to recover on behalf of Mother's estate certain sums of money Mother had given McMahan (1) for the purchase of the mobilehome in which McMahan lived and (2) to be deposited in a joint account and used in connection with real property Mother owned in Ireland. LeBlanc alleged McMahan used "fraud, undue influence and duress" to induce Mother to make the transfers, and accused her of financial abuse of an elder. (Welf. & Inst. Code, § 15610.30.) LeBlanc requested an order determining the sums transferred to McMahan belonged to Mother's estate, and awarding damages (including punitive damages), attorney fees and costs.

The probate court held a hearing on the petition over the course of three days, at which McMahan, LeBlanc, their sister (Geraldine McMahan) and three other witnesses testified, and approximately 40 documents were introduced. After the parties made their closing arguments, the court announced its ruling from the bench.

The probate court found Mother loaned McMahan \$80,000 for the mobilehome purchase, and ordered McMahan to repay that amount, plus interest. The court found McMahan wrongfully and in bad faith appropriated to her own use \$180,000 Mother intended to be deposited into a joint account and used in connection with property she owned in Ireland. The court further found McMahan's misappropriation of the \$180,000 constituted financial abuse of an elder. The court awarded \$180,000 as compensatory damages and an additional \$180,000 as punitive damages. The court also awarded attorney fees. Finally, the court ruled that the entire amount awarded against McMahan was to be deducted from her share of a trust established by Mother for the benefit of McMahan and her sisters.

The probate court subsequently entered a written order that included these various rulings. McMahan filed a notice of appeal from the order.

DISCUSSION

Although McMahan does not state precise claims of error in her briefing, she complains that the probate judge "show[ed] a marked bias in this case" and repeatedly was rude to McMahan; that the judge "failed to grasp the facts of this case"; and that LeBlanc "fail[ed] to show the requisite wrongdoing on [McMahan's] part." (Some capitalization altered.) McMahan thus appears to seek reversal on grounds of judicial bias and insufficiency of the evidence. As explained below, we reject these grounds for both procedural and substantive reasons.

A. *McMahon Has Procedurally Defaulted*

McMahon has forfeited her claims of error because she thoroughly disregarded the procedural requirements for briefs. McMahon did not include a table of contents or table of authorities. (Cal. Rules of Court, rule 8.204(a)(1)(A).) Instead of summarizing "the significant facts limited to matters in the record" (*id.*, rule 8.204(a)(2)(C)), she asserted numerous irrelevant facts with no corresponding citations to the record (*id.*, rule 8.204(a)(1)(C)). McMahon did not state arguments for reversal under separate headings or subheadings, or cite any legal authority that would support reversal (*id.*, rule 8.204(a)(1)(B)) — in fact, her opening brief contains no case citations and nothing recognizable as a legal argument. Further, McMahon is not exempt from these briefing requirements, and cannot escape the consequence of noncompliance with them, simply because she is representing herself on appeal. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Accordingly, because McMahon did not properly present an argument warranting reversal, we deem her challenge to the probate court's order forfeited. (See, e.g., *Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 947 [conclusory assertions in brief unsupported by citations to evidence or legal authority are forfeited]; *Aviel v. Ng* (2008) 161 Cal.App.4th 809, 821 [issue was forfeited "for want of cognizable legal argument"]; *Alameida v. State Personnel Bd.* (2004) 120 Cal.App.4th 46, 59 [reviewing court "may disregard arguments not properly presented under appropriate headings"]; *Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139 [reviewing court is not required to conduct independent, unassisted search of record for error].)

B. *McMahon's Claims of Error Have No Merit*

Even if McMahon had not forfeited her claims of error, we would reject them on the merits. She has demonstrated neither that the probate judge was biased against her nor that the evidence was insufficient to support the order challenged on appeal.

1. *McMahon Has Not Demonstrated Judicial Bias*

McMahon makes several assertions that appear to be part of her judicial bias claim. None, however, supports such a claim.

McMahon mentions two disqualification motions she filed, based on her belief the probate judge was biased against her. (See Code Civ. Proc., §§ 170.1, subd. (a)(6)(A)(iii), 170.3, subd. (c)(1).) The judge denied the first motion and struck the second as duplicative. We may not consider these motions or the associated orders, however, because the exclusive method for review of an order denying a disqualification motion is a petition for writ of mandate. (*Id.*, § 170.3, subd. (d); *People v. Freeman* (2010) 47 Cal.4th 993, 1000; *Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 775.)

McMahon next claims the probate judge was biased in refusing to admit into evidence some 35 documents that purportedly would have shown that the testimony of McMahon's sisters was not credible. But, McMahon has not directed us to or described the evidence she wished to present, or cited the pages of the clerk's or reporter's transcript where we may find the rulings that the evidence was inadmissible. We are therefore unable to consider McMahon's challenge to the evidentiary rulings, which she has forfeited. (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219

(*Colombo*); *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 796.) In any event, "[e]rroneous rulings against a litigant, even when numerous and continuous, do not establish a charge of bias and prejudice." (*Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719; accord, *People v. Fuiava* (2012) 53 Cal.4th 622, 732; see also *Scott v. Family Ministries* (1976) 65 Cal.App.3d 492, 510 ["A possibly erroneous ruling on evidence does not establish prejudice of the trial judge."].)

McMahon also complains the probate judge "had been continuously rude, snappish and hostile to [her] from the outset of [the judge's] presidenc[e over] this case." McMahon has not cited the pages of the record at which we may find any of the complained-of instances of discourtesy, however. "An appellant must support [her] argument in the briefs by appropriate references to the record, which includes providing exact page citation." (*Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140.) Where, as here, the appellant fails to support an argument with the necessary record citations, we may strike the offending portion of her brief and disregard the argument. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

In any event, our independent review of the transcript of the hearing on LeBlanc's petition revealed no occasion when the probate judge was "rude, snappish [or] hostile" to McMahon. To the contrary, the transcript shows that the judge treated McMahon, an often ill-prepared and disruptive litigant, with courtesy and respect at all times. In fact, on many occasions the judge was extremely patient with McMahon, and sometimes even

provided procedural guidance in the conduct of the hearing.¹ The transcript contains no indication the probate judge bore any personal animus toward McMahan.

Finally, McMahan cites "as another instance of bias" the probate judge's comment that McMahan's testimony was not credible in various respects. The judge made this comment as part of her ruling from the bench, after she had received all the evidence and heard the parties' closing arguments. "[W]hen the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies [the judge] in the trial of the action. It is [the judge's] duty to consider and pass upon the evidence produced before [the judge], and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party. The opinion thus formed, being the result of a judicial hearing, does not amount to [improper] bias and prejudice" (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312; accord, *Colombo, supra*, 111 Cal.App.4th at pp. 1219-1220; see also *Haldane v. Haldane* (1965) 232 Cal.App.2d 393, 395 [a trial judge's opinions of witnesses based on the presentation of a case "'may be critical or disparaging to one party's position, but they are reached after a hearing in the

¹ For example, the probate judge: (1) suggested how McMahan could overcome proper objections to questions she sought to ask witnesses; (2) explained in detail why opposing counsel's objections were proper; (3) suggested how McMahan could lay a foundation for testimony she wished to introduce; (4) explained to McMahan the available means of presenting her own testimony and helped her to present that testimony effectively; and (5) advised McMahan of the differences between testimony and argument and the appropriate time for each.

performance of the judicial duty to decide the case, and do not constitute a ground for disqualification'"].) The probate judge's remark about McMahon's credibility therefore did not demonstrate a disqualifying bias.

In sum, nothing in "the court's comments would cause a reasonable person to doubt the impartiality of the judge or would cause us to lack confidence in the fairness of the proceedings such as would necessitate reversal.'" (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994, 1008.) We thus reject McMahon's claim of judicial bias.

2. *Sufficient Evidence Supports the Probate Court's Order*

McMahon asserts "there is no evidence to support [LeBlanc's] contention that there was anything 'wrong' in the \$180,000 transaction," and complains the probate court "failed to grasp the facts of this case." She asks us "to find that there has, in fact, been a failure to show the requisite wrongdoing on [her] part" and, on that basis, to reverse the probate court's order. Construing this as a claim that the evidence was insufficient to support the order, we reject the claim.

When a judgment or order is challenged on the basis of the sufficiency of the evidence, the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the judgment or order. (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) Substantial evidence is evidence of ponderable legal significance, i.e., evidence that is reasonable, credible and of solid value. (*Estate of Young* (2008) 160 Cal.App.4th 62, 76.) We must view the evidence in the light most favorable to the prevailing party, drawing every reasonable inference and resolving all conflicts in that party's favor. (*Jessup Farms*, at

p. 660.) We may not reweigh the evidence and must accept the trial court's credibility determinations. (*Estate of Young*, at p. 76.) The ultimate question is whether, based on the whole record, a reasonable trier of fact could have found for the prevailing party. (*Ibid.*) As we shall explain, in this case the answer to that ultimate question is "yes."

Substantial evidence supports the trial court's findings and order regarding the \$80,000 transfer. At the hearing on LeBlanc's petition, McMahon admitted that she borrowed the \$80,000 from Mother to purchase a mobilehome and that she repaid no portion of that amount:

"Q. Isn't it true the monies used to purchase the mobilehome belonged to your mother?"

"A. No. It's true that I borrowed the money from my mother, and I took the borrowed funds and paid for the mobilehome."

"Q. How much did you borrow?"

"A. \$80,000."

"Q. How much have you paid back to the estate?"

"A. I have paid nothing back to the estate."

Based on this testimony, the probate court properly found the \$80,000 transfer from Mother to McMahon constituted a loan. The court also properly transferred the loan amount back to Mother's estate by ordering McMahon's share of the family trust reduced by \$80,000, plus interest. (See Prob. Code, §§ 850, subs. (a)(1)(D), (a)(2)(D), 856 [probate court may order possessor of property to which conservatee or decedent has claim to transfer property to estate]; *Estate of Stanley* (1949) 34 Cal.2d 311, 319 [probate court may determine rights under contracts ancillary to exercise of probate jurisdiction];

Estate of Kraus (2010) 184 Cal.App.4th 103, 113-114 [probate court has statutory and equitable powers to order return of money belonging to decedent's estate].)

Substantial evidence also supports the trial court's findings and order as they relate to the \$180,000 transfer. At the hearing on LeBlanc's petition, McMahon testified that Mother expected the \$180,000 to be deposited into a joint bank account in Ireland, but McMahon instead deposited the money into her own account in Ireland and used it for her own purposes:

"Q. Isn't it correct that . . . you received \$180,000 by way of a wire transfer from your mother?"

"A. That is true.

"Q. Where did this money go?"

"A. To Ireland.

"Q. Where in Ireland did the wire transfer go?"

"A. Into my bank account, where it was transferred into euros."

"Q. Where did the \$180,000 go?"

"A. Approximately \$70,000 of it was spent on attorney's fees And it has been spent on my medical needs and my living expenses over the last five years — the intervening five years."

"Q. Is there anything left in that account today?"

"A. Yeah. About \$22,000. 23,000 euros, I think."

"Q. Isn't it true that your mother thought she had a bank account in Ireland?"

"A. She thought that we had a joint account in Ireland. I thought we had a joint account there, too, and I thought it had been funded with \$180,000. That was my intention."

"Q. Did the money ever get put into the joint account?

"A. It did not."

Based on this testimony, the probate court properly found McMahon had misappropriated \$180,000 from Mother. The court also properly transferred that amount back to Mother's estate by ordering deduction of \$180,000 from McMahon's share of the family trust. (See Prob. Code, §§ 850, subds. (a)(1)(D), (a)(2)(D), 856 [probate court may direct possessor of property to which conservatee or decedent has claim to transfer property to estate]; *Estate of Kraus, supra*, 184 Cal.App.4th at pp. 113-114 [probate court may order return of money misappropriated from decedent's estate].)

Substantial evidence supports the probate court's additional findings that McMahon's misappropriation of the \$180,000 constituted financial abuse of an elder. There is no dispute that Mother qualified as an "elder," because she was older than 65 years and resided in California at the time of the transfer. (Welf. & Inst. Code, § 15610.27.) McMahon's testimony (quoted above) that she deposited the \$180,000 in her own account and used the money for her own purposes, rather than deposit the money into a joint account and use it for the property in Ireland as Mother intended, supports the court's finding that the \$180,000 transfer constituted "financial abuse," i.e., a taking of Mother's personal property that was "likely to be harmful to" her. (*Id.*, § 15610.30, subds. (a)(1), (b); cf. *Bonfigli v. Strachan* (2011) 192 Cal.App.4th 1302, 1316 [taking property from elder without payment constitutes financial abuse]; *Wood v. Jamison* (2008) 167 Cal.App.4th 156, 164-165 [taking money from elder for inappropriate

investment constitutes financial abuse].) Further, based on McMahon's financial abuse of Mother, the court properly awarded LeBlanc attorney fees. (See Welf. & Inst. Code, § 15657.5, subd. (a) ["Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, . . . the court shall award to the plaintiff reasonable attorney's fees and costs."].)

Finally, substantial evidence supports the probate court's order awarding punitive damages against McMahon for misappropriating the \$180,000. McMahon's testimony (quoted above) that she disregarded Mother's intentions that the \$180,000 be deposited into a joint account and used for Mother's property in Ireland, and instead deposited the money into her own account and used it to pay her own personal expenses, supports the court's express finding that McMahon acted in bad faith. (See, e.g., *Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 34 [bad faith indicates conduct prompted by dishonest purpose, sinister motive or ill will, as opposed to honest mistake, poor judgment or negligence]; *Estate of Kraus, supra*, 184 Cal.App.4th at pp. 108-109, 117 [defendant acted in bad faith by using power of attorney obtained from semiconscious and terminally ill woman to take her money and put it in his own account].) One who in bad faith takes property from a conservatee's or a decedent's estate "shall be liable for twice the value of the property recovered" by a petition filed under Probate Code section 850. (*Id.*, § 859.) These "double damages are punitive in nature, or a 'species' of punitive damages." (*Estate of Young, supra*, 160 Cal.App.4th at p. 92.) Hence, in connection with the \$180,000 transfer from Mother to McMahon, the trial court properly assessed an additional \$180,000 as punitive damages against McMahon and ordered her share of the

family trust reduced by a total of \$360,000. (See *Estate of Kraus*, at p. 117 [probate court properly ordered defendant to pay twice the amount of money he took from decedent's estate in bad faith].)

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

O'ROURKE, Acting P.J.

AARON, J.