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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

C. K., a Minor, etc. et al.,

Petitioner and Respondents,

v.

KALA D. RAINS,

Objector and Appellant.

D060133

(Super. Ct. No. 37-2010-000151514-  
PR-TR-CTL)

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

The question in this case is whether the probate court erred by removing a  
successor trustee of a revocable living trust for her inability to perform a trustee's duties.  
We answer the question in the negative, and thus affirm the order.

**FACTUAL AND PROCEDURAL BACKGROUND**

In 2005 Roger Keily, as trustor and trustee, established a revocable living trust  
(the Trust). At the time, Keily and Kala Rains had been longtime cohabitants, and they

had a daughter, C.K., age 10. The Trust named Rains as the successor trustee, and his adult daughter from another relationship, Sherrin Landis, as the alternative successor trustee. On Keily's death, the trustee was to distribute the trust estate equally to Rains, C.K., and Landis.

Keily died in January 2010, and Rains became the trustee. In June 2010 Landis petitioned the probate court for an order removing Rains as trustee, appointing Landis as trustee, and compelling an inventory of trust assets. The petition alleged Rains had not provided an inventory of trust assets; there were "complex issues regarding property taxes that are currently in default in an excess of . . . \$50,000"; there were "issues regarding title to various real properties claimed to be owned by [Rains] that . . . should be held in [the Trust]"; Rains was unemployed, had no means of support, and was using rental income of the Trust to support herself and C.K.; and the relationship between Landis and Rains had "completely broken down."

In July 2010 the court ordered Rains to prepare an accounting. The court also appointed Lori D. Bolander as guardian ad litem for C.K. The court continued the matter of removing Rains as trustee.

In December 2010 Rains submitted a first accounting. Landis objected to the accounting as not including all personal property and underestimating property values. Bolander also raised concerns on C.K.'s behalf, and she agreed with Landis's request for the removal of Rains as trustee.

Mediation was held on March 24, 2011, and on March 28 the parties informed the court that a settlement was reached that allowed Rains to remain as trustee. The court took the matter off calendar pending the drafting of a settlement agreement and a request for dismissal. Landis's petition was never returned to the calendar.

On April 27, 2011, however, Bolander petitioned for an order removing Rains as trustee, appointing a successor trustee, and setting a bond. The petition advised the court that the Trust had been served with a complaint for the wrongful death of a minor in an accident on real property owned by the Trust, and an answer to the complaint was due on April 28. Further, the Trust was "cash poor" and it was unclear how a defense would be financed. Bolander knew Rains's attorney was seeking to be removed as her attorney of record because he was unable to communicate with her, despite a condition of the settlement that she stay in close contact with him. Further, Bolander could not reach Rains.

The petition also stated Gerry Donnelly, a licensed private fiduciary, was willing to serve as successor trustee, attorney Kenneth Stone was willing to file an answer to the wrongful death complaint, and both Donnelly and Stone agreed to defer their compensation pending liquidation of trust assets. The petition argued Rains "is extremely derelict in her duties at this point. Not to mention the fact that the real properties of the Trust are apparently uninsured . . . , there are other responsibilities the Trust must tend to and needs a competent, willing Trustee to do immediately." Landis's attorney filed a declaration in support of Bolander's petition.

A hearing was held on May 3, 2011. Rains's attorney explained he had had difficulty contacting her. A final settlement had not been signed, partly because of the pending lawsuit. Rains had answered the wrongful death complaint in propria persona, which the court observed was "really a bad plan." The court stated it was inclined to remove Rains as trustee because "we simply need to get this trust on a professional footing." Rains requested an evidentiary hearing. The court relieved Rains's attorney of his duties.

The evidentiary hearing was held on May 5, 2011, and Rains appeared with a new attorney. Rains testified that the Trust owns two properties in Spring Valley and a 50 percent interest in a property in Portrero on which she lived. She was not paying the Trust any rent, but she planned to purchase the Trust's interest in the property from her share of the Trust assets. The Spring Valley properties were adjacent to each other and totaled approximately six acres. They were rented, with a total monthly income of \$2,400. There were inhabited motorhomes and campers on the properties, and Rains did no research to determine whether such uses were legal. On one of the properties, Rains rented space to a truck company to store three trucks for \$350 per month.

Rains testified that none of the properties was insured, because she had checked on an internet web site and "there was too much liability . . . to carry insurance." She claimed the renters had renters' insurance, but she had not seen copies of the policies.

When asked what she would do to generate income for the Trust if she remained trustee, Rains said she hoped to get a loan on property "to pay the lawyers off and get the

lawyer for the new suit." Rains was amenable to selling the Spring Valley properties, but she had not yet hired an agent, and she would rather wait for the market to pick up. She had gotten verbal offers of \$140,000 and \$200,000 on the Spring Valley properties, respectively, and she asked for but had not received the offers in writing. She believed the offers were too low to accept.

Rains testified she was unaware of any problem with her in propria persona representation of the Trust in the wrongful death action. She believed she was competent to do so. She conceded the action posed a risk to the Trust that was "[v]ery high." She testified she had read the "traffic report," and the seven-year-old son of the renter of one of the Trust's Spring Valley properties was riding a farm cart on the property, and the decedent was riding "a little 50 cc motorcycle." "The farm cart hit . . . the motorcycle. The motorcycle and the child fell over and [he] was subsequently [run] over by the farm cart."

The court granted Bolander's petition and removed Rains as trustee. The court appointed Donnelly with a \$20,000 bond. The court did not doubt Rains's good intentions, but determined she essentially inherited a "disaster" that required professional management. The court noted the properties were uninsured, and "now we have a lawsuit that I think has the extreme likelihood of gutting the entire value of this trust"; the properties had "code compliance problems"; the properties were in poor repair and

financially unsustainable, since rents did not cover expenses; and Rains "simply lacks the capacity to do the job."<sup>1</sup>

In June 2011 Donnelly submitted her resignation as trustee because shots were fired when she went to the Portrero property to conduct an inventory. The property was posted with no trespassing signs with pictures of guns. At one of the Spring Valley properties Donnelly "found numerous unlawful residents whom she believed to be on drugs," one of whom approached her in a threatening manner.

The court refused Rains's request to be reinstated as trustee. The court explained "this matter is a serious mess, and it's a serious mess under your tenure," "you have proven yourself incapable of working it out," and "I want this trust professionally managed." The court appointed a successor trustee with a bond of \$100,000.

## DISCUSSION

### I

Rains appears in propria persona on appeal. She contends "a certain legal courtesy is to be afforded a laymen [*sic*] in regard to their presentation." Pro se litigants, however, "are held to the same standards as attorneys." (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell*

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<sup>1</sup> Bolander mistakenly asserts the appellate record does not include a reporter's transcript from the May 5, 2011 hearing.

(1994) 8 Cal.4th 974, 985.) In any event, while Rains's briefing is largely uncertain and unintelligible, we address it to the extent possible.

## II

Rains asserts the court abused its discretion by allowing the "original petition," which presumably refers to Landis's petition to remove Rains as trustee, "to go forward." In Rains's view, Landis included "fraudulent statements" in her petition. Further, Rains asserts Landis's petition "activated the no-contest clause" of the Trust. Landis's petition, however, was taken off calendar and not returned to the calendar. Rains's notice of appeal is of the May 5, 2011 order removing Rains as trustee pursuant to Bolander's petition, and that is the only matter before us.

Further, Rains never raised the no-contest clause in the probate court, and a litigant generally cannot raise an issue for the first time on appeal. " ' "The rule that contentions not raised in the trial court will not be considered on appeal is founded on considerations of fairness to the court and opposing party, and on the practical need for orderly and efficient administration of the law." ' " (*Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 799-800.)

## III

Additionally, Rains asserts the court abused its discretion by appointing a guardian ad litem for C.K. Rains submits that the appointment caused "unnecessary costs" to the Trust. Under Probate Code section 1003, subdivision (a)(1), the "court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other

interested person, appoint a guardian ad litem at any stage of a proceeding under this code to represent" a minor. Rains cites inapplicable authorities, and she does not show any abuse of discretion. Under the circumstances, we conclude the appointment was prudent. Further, Bolander's stipulation during the proceedings on Landis's petition that Rains could remain a trustee, did not estop Bolander from later petitioning for Rains's removal. No judgment or stipulation was entered on Landis's petition, and Bolander's petition was primarily based on service of the wrongful death complaint.

Moreover, the time within which to appeal the September 1, 2010 order appointing a guardian ad litem has expired. (Code Civ. Proc., § 906.) Again, the appeal concerns only the May 5, 2011 order removing Rains as a trustee. Further, Bolander's conduct was not an issue in the probate court, and thus Rains may not raise it on appeal.

#### IV

Additionally, Rains contends the court erred by considering Bolander's petition *ex parte*. The court, however, held an evidentiary hearing on the matter. Rains's due process rights were protected as she had prior notice and a meaningful opportunity to be heard. (*Malek v. Koshak* (2011) 200 Cal.App.4th 1540, 1547.)

Rains complains that she had little time to prepare for the evidentiary hearing. At a May 3, 2001 hearing, the court set the evidentiary hearing for May 5. Rains, however, was represented by counsel and she did not seek additional time from the probate court. Rather, her counsel acquiesced to the date. She cannot raise the issue for the first time on appeal.

Rains also challenges the sufficiency of the evidence to support the court's ruling. Rains, however, violates a basic principal of appellate practice by not citing the evidence in favor of the ruling. " 'A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient*. [Citation.]' [Citation.] Where a party presents only facts and inferences favorable to his or her position, 'the contention that the findings are not supported by substantial evidence may be deemed waived.' " (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738.)

Even overlooking the deficiency, we find Rains's challenge to the sufficiency of the evidence lacks merit. "In determining the sufficiency of the evidence, we review the whole record in the light most favorable to the judgment for substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that any rational trier of fact could find the allegation true beyond a reasonable doubt. [Citation.] '[W]e presume[] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*In re L.K.* (2011) 199 Cal.App.4th 1438, 1446.)

"A trustee may be removed in accordance with the trust instrument, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under [Probate Code] Section 17200." (Prob. Code, § 15642, subd. (a).) A trustee may be removed when the trustee "is insolvent or otherwise unfit to administer the trust," and when the trustee "fails or declines to act." (Prob. Code, § 15642, subd. (b)(2) & (4).)

We conclude the evidence amply supports the court's ruling on Rains's inability to effectively manage the Trust, particularly given the pending wrongful death complaint and the lack of insurance on real property owned by the Trust, including the property on which the fatal accident occurred. Despite realizing that the suit posed a significant threat to the trust estate, Rains chose to represent the Trust instead of retaining an attorney who was willing to represent the Trust without payment pending liquidation of trust assets.

## VI

Further, Rains claims the probate court judge committed "abuses." Rains, however, impermissibly raises the issue for the first time on appeal. In any event, we have reviewed the record and find no impropriety.

## VII

Lastly, we address Rains's motion to augment the appellate record to include copies of Keily's will and her motion to dismiss Landis's petition to remove her as trustee. Neither document indicates it was before the probate court, and Rains concedes the court rejected her motion to dismiss. Further, both documents are irrelevant to the issues on appeal.

DISPOSITION

The order is affirmed. Bolander is entitled to costs on appeal.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.