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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of DANIEL T. SHELLEY,
Deceased.

AGDA SHELLEY, Individually and as
Trustee, etc.

Petitioner and Respondent,

v.

MICHAEL R. COULTER,

Objector and Appellant.

D060563

(Super. Ct. No. 37-2009-00150259-PR-
PW-NC)

APPEAL from orders of the Superior Court of San Diego County, Harry L.

Powazek, Judge. Affirmed.

Michael Coulter signed a settlement agreement in which he agreed to dismiss and release all his claims and causes of action against the estate of his deceased brother, and agreed an arbitrator would determine if the release barred any future pleadings he might propose to file concerning the estate. Thereafter, Coulter filed a "Petition for Revocation

of Probate" which sought to set aside his brother's will and trust, and an arbitrator ruled the filing was barred by the provisions in the settlement agreement.

Representing himself on appeal, Coulter challenges the trial court's orders compelling arbitration, confirming the arbitration award, and dismissing with prejudice his revocation petition. Coulter argues these rulings were erroneous because he was mentally incompetent at the time he signed the settlement agreement. The record supports the court's finding that Coulter did not establish his mental incompetency. Accordingly, we affirm the trial court's orders. However, we deny respondent's motion for sanctions against Coulter for filing a frivolous appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Coulter's First Revocation Petition

Coulter's half-brother (Daniel Shelley) died on February 21, 2009. On December 19, 2008, Daniel had executed a will; the will incorporated a trust that was executed by Daniel and his wife (Agda Shelley) concurrently with the execution of the will. Agda was named as the executor in the will and she was the trustee for the trust. She filed a petition to probate the will, and the court issued letters appointing her executor.

Coulter and his son (David Coulter) claimed Daniel owed them money and other assets as a result of agreements between Daniel and Coulter. They also claimed Agda and her trust administration attorney (Gregory Murrell) had conspired to exclude Coulter as a beneficiary in the estate planning documents executed by Daniel. Based on these allegations, Coulter and David filed creditor's claims against Daniel's estate and pursued

several court actions. As we delineate below, in April 2010 these claims and actions were resolved in a settlement agreement.

One of the actions filed by Coulter was a February 16, 2010 "Petition for Revocation of Probate" which sought to set aside Daniel's will and trust. Coulter, who at one time had been a licensed California attorney, represented himself in this proceeding. Coulter alleged Daniel was mentally incompetent and subjected to undue influence by Agda when he executed the will and trust. Coulter also alleged that when the probate proceedings were commenced, he was mentally unable to properly consider or bring a petition to object to the probate because he was "suffering mentally" and grieving over Daniel's death. Coulter claimed Daniel controlled and possessed in excess of \$300,000 that was due Coulter and that would have been designated to him in the will and trust but for Daniel's mental incompetence and the undue influence.

About one week later, on the evening of February 22, Coulter ruptured the globe of his right eye as a result of a weight lifting accident. He was taken to the emergency room and admitted to the hospital for emergency surgery to repair his eye.

On March 3 and 16, 2010, Coulter filed amended petitions for "Revocation of Probate." The March 16 amended petition was served that same date. Also on March 16, Coulter filed a declaration with the court stating the original petition had not been served because he had been in the hospital due to his eye injury and he was "now just regaining [his] ability to see properly."

The Settlement Agreement

A few days later, Coulter sent a letter (dated March 18, 2010) to Agda's attorney (Lewis Wolensky) which set forth Coulter's offer to settle his and his son's actions against the estate for \$45,000 (\$44,000 to David and \$1,000 to Coulter). In the letter, Coulter states, "As you know, Dave and I have been willing to settle and release all claims against Agda and the estate of my brother, for \$40,000.00, for some time." The letter explains that Coulter's settlement offer had now increased to \$45,000 due to the litigation activity he and his son had been required to pursue because of the failure to settle the case. Enclosed with the letter, Coulter sent Attorney Wolensky a proposed "Offer to Compromise" form to use for the settlement agreement, which Coulter described as an example of "rock-solid settlement and release agreements" which "are enforceable in any Court and prevent, foreclose and terminate any present and future claims, and lawsuits, between the parties regarding the subject matter of the settlement agreement. Simply put, they require a Court to dismiss any future lawsuits or claims related to the matter of the settlement agreement, and release of all claims."

On April 2, 2010, Coulter and David signed a "SETTLEMENT AND MUTUAL GENERAL RELEASE AGREEMENT" in which Agda agreed to pay \$40,000 to David and \$5,000 to Coulter. The agreement includes a release provision stating the parties release and waive all claims and causes of action related to Daniel's estate.¹ The agreement states the payment of monies by Agda is in "complete and exclusive

¹ The agreement excludes Attorney Murrell (and actions related to him) from the release and other provisions.

satisfaction" of all the claims and causes of action concerning the estate, and Coulter and David would withdraw their creditor's claims and dismiss with prejudice all the court actions related to the estate. The agreement contains provisions entitled "**Representation of Comprehension of Agreement**" and "**Capacity**," which state the parties "represent that they have read the contents of this Agreement and that the terms of this Agreement are fully understood and voluntarily accepted by them"; "[n]o party shall deny the validity of this Agreement on the grounds . . . that they did not understand the terms of this Agreement"; and "[e]ach of the parties represents and warrants that they have capacity to enter into this Agreement and that they will not seek to set aside this Agreement on the ground of lack of capacity, incompetence, or mental infirmity of any nature."

The agreement also includes a "**Covenant Not To Sue**" provision which states the parties promise not to institute any action concerning the matters released under the agreement. This provision sets forth a binding arbitration agreement, stating Coulter and David agree that no action against Agda "shall be brought . . . without first submitting the matter to a binding, non-appealable arbitration to determine whether or not the proposed action or suit is barred by the releases and covenants not to sue set forth in this Agreement." The provision states that Coulter or David will give Agda written notice and a copy of any proposed pleading that they intend to file, and Agda will then select an arbitrator to determine whether the claim is covered by the release. If the arbitrator rules that Coulter or David's proposed action "is covered by the releases and covenants not to sue as set forth [in the agreement], [they] shall not file the action in any state or federal

court." Finally, the agreement contains an attorney fees provision which provides for an award of fees and costs to the prevailing party in any action to enforce or interpret, or for breach of, the agreement.

Thereafter, pursuant to the terms of the settlement agreement, on April 8 and 9, 2010 Coulter withdrew his creditor's claim and moved to dismiss with prejudice his petition to revoke probate. Agda apparently paid Coulter the monies due under the settlement agreement.

Coulter's Refiled Revocation Petition

However, on July 21, 2010, Coulter filed another petition to revoke probate (the "refiled revocation petition"). The refiled revocation petition sought to set aside Daniel's will and trust on the same grounds as Coulter's previous petition (i.e., Daniel's mental incompetency and Agda's undue influence). Contrary to the terms of the settlement agreement, Coulter did not refrain from filing the refiled revocation petition until he had notified Agda and obtained an arbitrator's determination that it was not barred by the release provision in the settlement agreement.

In the refiled revocation petition, Coulter alleged the settlement agreement and his dismissal of the previous petition were "null and void" because he signed them "while he was in a mental and physical condition which rendered him unable and incapable of understanding the nature of the documents being executed."

The Arbitration Decision and the Dismissal of the Refiled Revocation Petition

On August 23, 2010, Agda filed a petition to compel arbitration to determine whether the refiled revocation petition was barred by the settlement agreement.² The matter was heard at a hearing on October 15, 2010.

In opposition to the motion to compel arbitration, Coulter argued the settlement agreement was unenforceable due to his mental incompetency when he signed the agreement. In support of this claim, he submitted a declaration describing his medical conditions. Coulter stated that in 2000 he became a paraplegic, and he has been taking a variety of blood pressure and pain medications on a continuous basis since that time. In the latter part of February 2010 he injured his right eye and underwent eye surgery. For about three months after the surgery, he was unable to read, and he experienced continuous severe pain, dizziness, depression, anxiety, and fatigue. He was "virtually bed ridden the entire time." For about two months after the surgery, he took increased and additional pain medications and drank at least one half pint of vodka on a daily basis.

Concerning his mental state at the time of the settlement agreement, Coulter declared: "During the above two (2) month period I was totally without understanding of what I was doing and unable to understand or read the Release and Settlement Agreement upon which Agda Shelley seeks to compel arbitration. I don't even remember signing the Release and Settlement Agreement, nor the dismissals of my Petition To Revoke Probate, and the other actions I was pursuing against Agda Shelley[.]" Coulter provided the court

² Agda also requested that the proceedings on the refiled revocation petition be stayed pending resolution of the arbitration matters. The request was granted.

with a copy of his medical records which described his February 22 eye injury and the need for emergency surgery.³

To refute Coulter's incompetency claim, Agda presented the trial court with various documents produced by Coulter for this case and other pending actions during the period of the claimed incompetency (i.e., between his February 22 eye injury and his April 2 signing of the settlement agreement). These included a February 23 case management statement; February 28 interrogatories; a March 1 notice designating clerk's and reporter's transcripts on appeal; a March 2 appellate civil case information statement; the March 3 and 16 amended revocation petitions; the March 18 settlement offer letter; and a March 22 statutory offer to compromise. All of these documents (except the interrogatories) contain Coulter's signature.

Also, Agda's counsel (Wolensky) submitted a declaration stating he had phone communications with Coulter on March 3 and 4 and April 2, 5, and 6 about settling the case, and during these communications Coulter did not claim he had any vision or comprehension problems; he did not appear to be impaired; and his communications were rational and focused. Further, Agda noted the medical documents submitted by Coulter referred only to a three-day period commencing on the date of his February 22 injury, and they did not address his medical condition on April 2 when he signed the settlement agreement.

³ The record on appeal does not show the exact date of the emergency surgery.

In response, Coulter submitted a declaration stating his son "prepared, typed and submitted" the documents involved in the various legal proceedings because he is unable to operate a computer due to his physical limitations. At the hearing on the motion, Coulter also told the court that most of the documents were prepared before his eye injury; his son just told him to " 'sign here' "; and his "son handles the affairs and [he] rel[ies] on [his] son." Nevertheless, Agda's counsel told the court that Coulter, not his son, was the person negotiating the settlement terms.

The trial court granted Agda's petition to compel arbitration. The court stated it spent "a lot of time with the file" and listened carefully to Coulter's arguments because it did not "like holding people bound to an agreement" when they claim they did not have the capacity to understand. The court noted the medical records clearly showed there was an injury in late February, but the April settlement agreement was not reached until several weeks after this injury. During the time between the injury and the settlement agreement, Coulter promulgated correspondence and pleadings that were detailed and that contained his signature, including the March 18 settlement offer. The court concluded Coulter had not carried his burden to show he was incompetent at the time he entered into the settlement agreement.

The arbitration was held on December 20, 2010. Coulter apparently did not participate in the arbitration.

On January 5, 2011, the arbitrator issued a decision finding that Coulter's refiled revocation petition was barred under the settlement agreement; Coulter gave up his right to file the petition when he executed the agreement and accepted consideration

thereunder; and he breached the settlement agreement by filing the refiled revocation petition without first having it evaluated by an arbitrator. In his ruling, the arbitrator stated there was no documentation showing Coulter had initiated a proceeding to set aside the settlement agreement, but noted that in the order compelling arbitration the trial court had found that Coulter had not shown he was incompetent at the time of the settlement agreement. Based on the attorney fees provision in the settlement agreement, the arbitrator ordered Coulter to pay Agda \$22,620 for fees and \$3,445 for costs.

On April 28, 2011, Agda filed a petition to confirm the arbitration award. Coulter did not appear at the hearing on the petition. On June 24, 2011, the petition to confirm the arbitration award was granted, and Coulter's refiled revocation petition was dismissed with prejudice. Coulter was ordered to pay Agda \$225 for attorney fees and \$395 for costs for her pursuit of the petition to confirm.

DISCUSSION

On appeal, Coulter contends the trial court erred in granting Agda's petitions to compel arbitration and to confirm the arbitration award and in dismissing his refiled revocation petition. He argues the settlement agreement that bars his refiled revocation petition is unenforceable because, as set forth in his declaration submitted to the trial court, he was mentally incompetent at the time of the agreement.

A party may seek to be relieved from a contract if "when he entered into the contract, he was not mentally competent to deal with the subject before him with a full understanding of his rights, the test being . . . whether he understood the nature, purpose and effect of what he did." (*Smalley v. Baker* (1968) 262 Cal.App.2d 824, 832,

disapproved on other grounds in *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 485-486.)

Mental incompetency does not require long-lasting or complete incapacitation, and it may exist when a party takes " 'unfair advantage of another's weakness of mind' " arising from such factors as "lack of full vigor due to age, physical condition, emotional anguish, or a combination of such factors." (*Smalley, supra*, at pp. 834-835.)

Generally, the courts presume a party is mentally competent to enter into an agreement and the burden of proof is on the party raising the incompetency claim. (*Wilson v. Sampson* (1949) 91 Cal.App.2d 453, 459; *California Bank v. Bell* (1940) 38 Cal.App.2d 533, 538; Prob. Code, § 810, subds. (a), (b) [there is a "rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions"; "A person who has a mental or physical disorder may still be capable of contracting . . ."].) Mental competency is a question of fact for the court or jury, and on appeal we review the ruling for substantial evidence. (*Philbrook v. Howard* (1958) 157 Cal.App.2d 210, 214; *Snokelberg v. Crecelius* (1955) 131 Cal.App.2d 136, 138.) We draw all reasonable inferences in favor of the ruling, and uphold it if there is any rational ground to support it. (*Philbrook, supra*, at p. 214; *Snokelberg, supra*, at p. 138.)

The record supports the court's finding that Coulter did not prove he was mentally incompetent when he signed the settlement agreement in April 2010. Coulter's claim of incompetency is based on his condition during the two to three months following his eye surgery. The injury to his eye occurred on February 22, 2010, and he then underwent emergency surgery. About three weeks later (on March 16, 2010), he signed and filed a

declaration with the court stating he was "now just regaining [his] ability to see properly." About two weeks later (on April 2, 2010, which was five weeks after his surgery), Coulter signed the settlement agreement. The trial court could reasonably infer that prior to his signing of the settlement agreement, sufficient time had elapsed (i.e., two weeks after the improvement in his sight, and five weeks after the surgery) for Coulter to regain any loss of mental competency he may have experienced in the aftermath of the surgery.

The court's finding is also supported by the large volume of documents signed and/or produced by Coulter for the various legal proceedings that were pending during the period between his February eye surgery and the April settlement agreement. These included petitions and a case management statement filed in the trial court, settlement offers and interrogatories conveyed to the parties, and court filings related to an appeal. The trial court could reasonably deduce that if Coulter was mentally incompetent during this time period, he would not have been able to participate in the production of so many legal documents.

To refute the inference of competency arising from his production of numerous legal documents after his eye surgery, Coulter states that during the time period of the settlement agreement, his son David "prepared and filed [his] legal work." The court could infer that this circumstance bolstered, rather than detracted from, a competency finding. To the extent Coulter may have been suffering from vision impairment and/or side effects from his pain medications, the court could infer Coulter's son would have explained the contents of the legal documents, including the settlement agreement, to his

father before his father signed them, and his son would not have carried through with the transactions had he thought his father was incompetent after the eye surgery. The court could reasonably conclude the participation of Coulter's son provided an added assurance of Coulter's competency at the time of the settlement agreement.

Further, the inferences of competency are supported by the fact that on March 18 Coulter signed a letter offering to settle the estate disputes for the same amount (\$45,000) that was ultimately reached in the settlement agreement. The record does not suggest that Coulter signed a disadvantageous settlement agreement due to his medical infirmity.

Coulter argues that as a matter of law he met his burden to show incompetence based on his declarations and the medical records he submitted to the court. The contention is unavailing. He has not cited to anything in the medical records that conclusively establishes his incompetency at the time of the settlement agreement. Further, contrary to his claim on appeal that his declaration of incompetency was uncontradicted, Agda's counsel (Wolensky) submitted a declaration stating Coulter did not appear to be impaired during phone conversations about settling the case. Moreover, even if Coulter's declaration of incompetency was uncontradicted, the trial court was not required to believe it. (*Hicks v. Reis* (1943) 21 Cal.2d 654, 659-660 ["Provided the trier of the facts does not act arbitrarily, he may reject . . . the testimony of a witness, even though the witness is uncontradicted."].)

Coulter also cites a statement in Wolensky's declaration that refers to Coulter's son's description of his father's state of mind. Wolensky declared: "Shortly before the Settlement Agreement was executed by the Coulters, I received an unsolicited telephone

call from David Coulter. I am informed and believe that David lives with his father. David warned me that if we settled with his father, this would not be the end of the litigation with [Coulter]. He told me that his father intended to settle, get the money from AGDA and then re-file the same claim for Revocation Of Probate It was for this reason that I inserted the arbitration clause into the Settlement Agreement requiring [Coulter] to submit any future claim against AGDA before filing to an arbitrator for his determination as to whether the claim was released. [Coulter] then ignored this pre-filing arbitration clause and claimed he was incompetent. This conduct establishes that [Coulter] was not incompetent, but that his actions were calculated and malicious."

Coulter contends this statement in Wolensky's declaration shows the settlement was a bad faith agreement by Wolensky to take advantage of him when he was very sick following his eye surgery because it was apparent he lacked the mental capacity to know what he was doing. The trial court was not required to draw this inference, but could infer that, as claimed by Wolensky, Coulter had a plan to try to avoid the release provisions in the settlement by raising a spurious claim of mental incompetency after executing the settlement and taking the monies distributed thereunder.

There is substantial evidence to support the court's finding that Coulter did not prove he was incompetent at the time of the settlement agreement. Accordingly, the court did not err in compelling arbitration, confirming the arbitration award, and dismissing the refiled revocation petition with prejudice.

Additional Contentions

Coulter raises several additional arguments in his appellate briefing that challenge the court's orders. He argues the trial court required a doctor's report opining he was incompetent at the time of the settlement agreement, and contends this was improper because his declaration was sufficient to show his state of mind without expert opinion.

At the hearing on the motion to compel arbitration, the trial court asked Coulter if he had filed a declaration or letter from his doctor addressing his capacity at the time he executed the settlement agreement, and Coulter told the court he had not. When ruling that Coulter had not carried his burden to show incompetency, the court noted that Coulter's medications could clearly affect his decisionmaking capability, but it had no documentation showing his incapacity at the time of the settlement agreement other than Coulter's declarations. The record does not show the court *automatically* rejected the incompetency claim because of the absence of a doctor's opinion; rather, this was simply a factor the court considered when evaluating all the evidence before it. The trial court could reasonably consider Coulter's failure to submit a doctor's opinion about his mental state at the time of the settlement agreement when deciding whether to credit Coulter's incompetency claim. (See *People v. Brady* (2010) 50 Cal.4th 547, 566 [trier of fact may consider party's failure to introduce available material evidence].) Coulter has not shown error in this regard.

Coulter also asserts the court improperly used the standard of competency applicable for appointment of a guardian. He has not cited to the record or to case authority to support this argument. Because of his cursory presentation of this issue, we

need not address it. (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 282-283.) In any event, there was no error. At the hearing on the motion to compel arbitration, the court stated that it presumed Coulter had the capacity to enter into the agreement and it was his burden to show otherwise. This was the correct legal standard. (*Wilson v. Sampson, supra*, 91 Cal.App.2d at p. 459; *California Bank v. Bell, supra*, 38 Cal.App.2d at p. 538; Prob. Code, § 810, subd. (a).)

Coulter argues the attorney fees awarded by the arbitrator and confirmed by the trial court were "unsupported/undocumented and unnecessary." When making the attorney fees award, the arbitrator enumerated the various legal steps Agda's counsel undertook in response to Coulter's refiled revocation petition. Further, the arbitrator's decision states: "Counsel for Agda have submitted timesheets reflecting the hours they have spent on the matters at issue herein; the specifics related to the work they have done; and their hourly rates. [¶] Attorney fees have been requested in the sum of \$22,620 for legal services directly related to the proceedings, pleading up to the arbitration, and the arbitration proceedings themselves. I find the attorney fees request reasonable" Coulter has presented no information or arguments to support his claim that the amount of fees requested was unsupported or unreasonable. He has not carried his burden to show error in this regard. (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375-1376.)

Coulter argues the arbitration was unnecessary because it was clear from the face of the settlement agreement that he was barred from refiled his revocation petition. He asserts he told Adga's attorneys he was not going to participate in a "sham" arbitration

pursuant to an agreement he did not remember signing and he was going to appeal the order compelling arbitration (which rejected his mental incompetency claim). The record shows Coulter sent letters to the arbitrator and Agda's attorney stating he was not going to pursue the refiled revocation petition but was going to withdraw it, appeal the order compelling arbitration, and pursue other remedies; he was not going to arbitrate claims pursuant to an agreement that he had no knowledge of entering into; and the arbitration should not be pursued. The arbitrator cited these letters in his written decision, and noted that, notwithstanding Coulter's statement that he would withdraw his refiled revocation petition, the arbitrator had not received any information that he had actually done so. Likewise on appeal, Coulter has not cited anything in the record showing that he did, in fact, withdraw the refiled revocation petition, or that he offered to conditionally stipulate to the arbitration issues pending appellate resolution of his mental incompetency claim. (See *Magaña Cathcart McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal.App.4th 106, 121 ["parties may stipulate to a judgment in order to secure appellate review"].) Absent such a showing, he cannot prevail on a claim that the arbitration proceedings pursued by Agda were unnecessary.

Given our rejection of Coulter's challenges to the arbitration award, we need not address Agda's contention that Coulter did not follow the proper procedures to challenge the award.

Agda's Request for Sanctions on Appeal

Agda filed a motion requesting that we impose sanctions on Coulter for filing a frivolous appeal.

An appeal may be deemed frivolous and sanctions imposed "when [the appeal] is prosecuted for an improper motive — to harass the respondent or delay the effect of an adverse judgment — or when it indisputably has no merit — when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) Coulter was entitled to appellate review of the trial court's finding that he had not proven his incompetency at the time of the settlement agreement. Although the record supports the trial court's finding concerning Coulter's incompetency claim, the record does not affirmatively demonstrate that the appeal was brought for improper motives or that it was totally and completely without merit. We deny the request for sanctions.

DISPOSITION

Orders affirmed. Appellant to pay respondent's costs on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.