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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Estate of MARILYN HUSTEDT
YOKAITIS, Deceased.

HEIDI HUSTEDT MORANDINI,

Defendant and Respondent,

v.

STANLEY SNIFF as Riverside County
Public Administrator,

Claimant and Appellant.

E054809

(Super.Ct.No. INP021210)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.

Affirmed.

Law Office of Toni Eggebraaten and Toni Eggebraaten for Claimant and
Appellant.

Nethery & Ofseyer, D. Martin Nethery and Jeremy J. Ofseyer for Defendant and
Respondent.

I

INTRODUCTION¹

The probate court appointed petitioner and appellant Stanley Sniff, the Riverside County Public Administrator, as the special administrator for the estate of the decedent, Marilyn Yokaitis. (§ 8540 et seq.) Objector and respondent, Heidi Morandini (Morandini), is the surviving adult daughter of decedent and the residuary beneficiary of the bulk of the estate. Donald Yokaitis (Donald) is decedent's surviving spouse.

The issue on appeal is whether the Public Administrator is entitled, under section 7621, subdivision (d), to be paid a statutory bond fee of about \$265,000 in lieu of payment of a bond premium (in-lieu bond fee). Morandini opposes payment of the fee on the grounds the Public Administrator did not have to post a statutory bond under section 8542 and also waived any bond fee.

After reviewing supplemental briefing regarding the applicability of section 8542, we have concluded that, when the Public Administrator was appointed as a special administrator in this case, it was not required to post a bond. We agree with the probate court's finding that the parties waived any bond fee that may have been required under section 7621. We affirm the judgment.²

¹ All statutory references are to the Probate Code unless stated otherwise.

² We deny the motion to take judicial notice filed February 1, 2012, because the legislative history is not relevant to the material issue in the case. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4.)

II

FACTUAL AND PROCEDURAL HISTORY³

A. Letters of Administration

The decedent had substantial separate property assets, including stocks, bonds and commercial real property. At the time of the decedent's death in March 2007, her estate was estimated to be more than \$23 million, and to generate at least \$1 million in income annually.

Donald, decedent's husband, produced a 1992 holographic will. Morandini, decedent's daughter, produced a 2006 holographic will. A will contest ensued.

As part of the estate's administration, Morandini requested a bond be fixed at \$3,595,000. Donald requested that no bond be required.

In June 2007, Donald filed a subsequent petition for letters of special administration, asking to be appointed as a special administrator because of his specialized knowledge and expertise concerning property management and the assets of the estate and requesting that no bond be required. Morandini also applied to be appointed as a special administrator or for the appointment of Bank of America as a special administrator with general powers.

B. Appointment of Special Administrator

At a hearing in July 2007, the probate court announced it could not appoint a special administrator with general powers because of lack of notice but it could make an

³ Some facts are derived from a previous appeal, *Estate of Yokaitis* (Nov. 25, 2008, E045002) (nonpub. opn.).

appointment with special powers. Donald's attorney proposed the appointment of the Public Administrator, to serve without a bond.

Morandini's attorney, D. Martin Nethery, objected to the appointment of the Public Administrator, a government agency, instead of Bank of America, because the complex estate required "sophisticated hands-on management" and immediate action. Nethery argued that the Public Administrator was understaffed and overworked, making it difficult to communicate with its employees. Furthermore, if Bank of America was appointed, a bond would not be required.

The court and the attorneys discussed that the Bank of America or the Public Administrator would be entitled to statutory fees, as well as extraordinary fees, for their services but that neither appointee would need to post a bond.

After the matter was submitted, the court denied Morandini's petition and granted Donald's petition, appointing the Public Administrator to act as a special administrator, without a bond, with enumerated special powers, including the powers set forth in section 8544, and the powers to inventory and sell assets, to manage tax obligations, and to enter into contracts.

C. Order for General Powers

In September 2007, the Public Administrator filed a petition requesting the court grant it general powers to allow it to borrow money and to pay taxes of \$8 million to \$10 million. Morandini consented because of the need to pay taxes. Donald strenuously opposed granting general powers to the Public Administrator. In October and November

2007, the court granted the petition, appointing the Public Administrator as a special administrator with general powers and ordering a “Bond is not required.”

D. The First Accounting

In the first accounting filed in June 2009, the Public Administrator represented that Donald was continuing to act as property manager for the estate, for which he was compensated. The estate tax return had been filed and partial tax payments had been made. The value of the estate was about \$24.5 million. There was ongoing litigation between the parties. The Public Administrator’s attorney, Stephen A. Sidoni, asked to be paid for extraordinary services in the amount of \$64,590. The Public Administrator sought payment of \$262,440.96 as statutory compensation. The Public Administrator also requested an in-lieu bond fee of \$162,985.87.

Morandini filed a number of objections, including to the statutory fees and extraordinary services, but did not expressly object to the in-lieu bond fee. Donald also filed objections, including to the in-lieu bond fee. The Public Administrator defended its claim for statutory fees and extraordinary services without mentioning the in-lieu bond fee. In a subsequent response, Morandini states: “The administrator also includes his bond fee, which although an annual charge against the estate, **is not required by statute to be paid annually**. Indeed, given the income generated by this estate, this fee could be paid in quarterly installments by mid-late 2010.”

E. Petition for Settlement of the Estate

The parties settled their will contest and sought the court’s approval in June 2010. In her petition for approval of the settlement agreement, Morandini acknowledged that

the unpaid debts of the estate included “[a] portion of the statutory fees and commissions, any extraordinary fees and commissions, and a public administrator bond, as may be awarded to the Special Administrator and/or his counsel.” Morandini proposed selling an estate asset—expected to net \$731,000—to pay any amounts owed, including the statutory bond fee.

F. Morandini’s Objections to the In-Lieu Bond Fee

At the hearing on July 23, 2010, Morandini raised objections to the payment of the in-lieu bond fee, arguing that the Public Administrator had waived the fee. The Public Administrator argued that the bond fee was mandatory and required to defray the county’s costs of self-insuring.

Morandini then filed written objections, again arguing that the Public Administrator had waived any right to a bond fee and that a bond fee was an unnecessary expense under section 11004. Morandini reviewed the procedural history of the case and identified the points at which the parties and the court had discussed how the Public Administrator, as a governmental entity, was exempt from bond requirements. Morandini noted the Public Administrator had not requested a bond fee until June 2009, plus statutory fees of about \$262,000 and additional fees for extraordinary services.

The Public Administrator responded by seeking statutory fees of about \$218,000, a bond fee of about \$265,000, and extraordinary fees of about \$107,000. The Public Administrator disagreed that the bond fee could have been waived because it is mandated by statute and a bond or a program of self-insurance is required under Government Code

section 24150 or section 24156. The Public Administrator claimed a bond fee is a necessary expense under section 11004.

After oral argument, the probate court⁴ issued a written ruling, making detailed factual findings:

“Heidi Morandini objected to the payment of any bond fee, contending that it is an unnecessary expense under . . . section 11004 and the public administrator has waived the fee, because at the outset of this proceeding, the public administrator represented that there would be no bond fee if the public administrator were appointed, in contrast to the appointment of Bank of America, a licensed trust company that would not be required to post a bond, as requested by Morandini.

“The transcript of the hearing on July 3, 2007 makes it clear that counsel for the public administrator [Stephen Sindoni] did state that no bond fee would be required if the public administrator were appointed. After a discussion concerning the size of the bond, in which the Court stated that if the Court ‘went to a third party institution, such as Bank of America, there’s no bond required,’ the following colloquy occurred:

“The Court: The Public Administrator [would] be willing to do this, Mr. Sindoni, based on the fact that you wouldn’t have general powers, you would just have these special powers, at least at this time?

“Mr. Sindoni: Yes, Your Honor.

⁴ At least three different judges—Lawrence W. Fry, Randall D. White, and Harold Hopp—conducted the various hearings between 2007 and 2011.

“The Court: Okay. Is that correct: do you all agree the Public Administrator can serve without bond?

“Mr. Sindoni: I—I agree. That’s—that’s—that’s in the Code. [¶] . . . [¶]

“Further, when the Court questioned Mr. Sindoni about how the public administrator would be compensated, there was no mention of a bond fee. [¶] . . . [¶]

“The Court finds that, although the misrepresentation may have been inadvertent, counsel for the public administrator caused the Court to understand that no bond fee would be required if the public administrator were appointed and that this misunderstanding was a significant factor in the appointment of the public administrator. It seems clear that the cost of the bond was something that Judge Fry considered important in deciding whether to appoint the public administrator rather than a licensed trust company, such as Bank of America. The Court further finds that this fee may be waived by the public administrator or, alternatively, that the public administrator may be estopped from seeking or taking the fee, if, as here, it has implicitly represented that it will not be paid the fee. [¶] Therefore, the objection to the bond fee is sustained.”

The court awarded the Public Administrator statutory fees of about \$211,000. The court also awarded extraordinary fees of \$6,600.

III

STANDARD OF REVIEW

The Public Administrator argues the standard of review is de novo because the facts are undisputed and the issue is a question of law. Morandini agrees the doctrines of waiver and estoppel involve legal issues subject to de novo review but asserts the factual

findings by the trial court are subject to a substantial evidence standard of review. (*St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187, 1196; *Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 46.) We apply Morandini's articulation of the standards of review in the following analysis.

IV

SECTIONS 7621 AND 8542

In the probate court, Morandini and Donald argued about whether the Bank of America or the Public Administrator should be appointed as the personal representative or the special administrator of the estate. The parties generally agreed that neither the Bank nor the Public Administrator would have to post a bond. Had the Bank of America been appointed, it would not have been able to charge a bond fee as an additional expense to the estate. However, unlike the situation with the Bank of America, two statutes of the Probate Code deal with the bond and the bond fee for a public administrator.

Section 7620 et seq. contains the general provisions for the appointment of the public administrator as a personal representative of an estate. Section 7621, subdivision (d), allows a public administrator acting as a personal representative to charge the estate a bond fee:

“The public administrator's oath and official bond are in lieu of the personal representative's oath and bond. Every estate administered under this chapter shall be charged an annual bond fee in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The

amount charged is an expense of administration and that amount shall be deposited in the county treasury.” (§ 7621, subd. (d).)

A more specific statute applies when the probate court appoints a public administrator as a special administrator. The probate statutes which apply to the appointment of a special administrator are found at section 8540 et seq. In particular, section 8542 provides that a public administrator acting as a special administrator does not have to post a bond:

“(a) The clerk shall issue letters to the special administrator after both of the following conditions are satisfied:

“(1) The special administrator gives any bond that may be required by the court under Section 8480.

“(2) The special administrator takes the usual oath attached to or endorsed on the letters.

“(b) *Subdivision (a) does not apply to the public administrator.* [Emphasis added.]”

Thus, section 8542 plainly exempts a public administrator appointed as a special administrator from posting a bond although it does not expressly mention a bond fee.

The record establishes that the probate court first appointed the Public Administrator as a special administrator, with enumerated special powers, and with no bond. Later, the court appointed the Public Administrator as a special administrator with general powers, again with no bond. The Public Administrator was never required to post a bond by court order.

Nevertheless, the Public Administrator contends that, although no bond was required, it is still entitled to receive an in-lieu fee as compensation for what it variously describes as its “official bond,” its “official oath,” or for its “statutorily mandated liability coverage.” In oral argument, counsel for the county explained that the in-lieu fee compensates the county for the benefit provided to private parties, i.e., the estate beneficiaries, for the security of having services provided by the Public Administrator. The Public Administrator relies on the language of section 7621, subdivision (d), stating: “The public administrator’s oath and official bond are in lieu of the personal representative’s oath and bond.” In other words, the Public Administrator is entitled to a bond fee because its official bond is a substitute for the bond usually required from a personal representative.

The appellate record in this case offers no evidence of any official bond, insurance policy, or other liability coverage obtained by the county, or any cost of self-insurance borne by the county—the expense of which might justify imposing a bond fee on the subject estate. Even assuming the county’s official duty has been regularly performed (Evid. Code, § 664), it is not wholly clear, as argued by Morandini, that the bond fee required under section 7620, subdivision (d), is required where a public administrator has been appointed as a special administrator under section 8542. If there is no requirement for a bond—or some equivalent—there may be no requirement for a bond fee for a public administrator acting as a special administrator.

Under different factual circumstances, however, we might have agreed the Public Administrator was entitled to charge a bond fee under section 7621. Nevertheless, we do

not need to resolve this issue because, as discussed below, we ultimately conclude that the trial court's findings that the Public Administrator waived any bond fee are amply supported by the record.

V

THE PUBLIC ADMINSTRATOR WAIVED THE BOND FEE

In affirming the probate court, we find the record offers substantial evidence to support the probate court's factual findings that the Public Administrator waived any claim for a statutory bond fee. (*St. Agnes Medical Center v. PacifiCare of California, supra*, 31 Cal.4th at p. 1196; *Blix Street Records, Inc. v. Cassidy, supra*, 191 Cal.App.4th at p. 46.) Because the record demonstrates the existence of a waiver, the present case does not involve the separate question of the trial court's discretion to reduce the amount of a bond fee. (*Conservatorship of Cooper* (1993) 16 Cal.App.4th 414, 419-420.)

The Public Administrator, as a governmental entity, may waive a statutory right: "Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. . . . The doctrine of waiver applies to rights and privileges afforded by statute." (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 534.) Statutory rights may be waived unless waiver is expressly prohibited. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1049, fn. 4.) The requirement of a bond is subject to waiver. (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 740-744.) It has not been established on this record how waiver in this case would seriously

compromise any public purpose because there is no concrete showing how the county would be harmed by waiver. (*Azteca Construction, Inc. v. ADR Consulting, Inc.* (2004) 121 Cal.App.4th 1156, 1166.)

According to the record, the issue of the bond and the bond fee was raised repeatedly throughout the proceedings over a three-year period. When the Public Administrator was appointed in July 2007 and afterwards, the probate court and the parties discussed or mentioned the bond and bond fee more than a dozen times. Morandini and Donald both consistently opposed the estate being liable for the expense of a bond. In appointing the Public Administrator as a special administrator, the probate court was primarily concerned about charging the estate with the cost of a bond. Furthermore, if the Bank of America had been appointed, as requested by Morandini, it could not have claimed a bond fee. The record indicates the probate court would have appointed Bank of America as a special administrator had it known the Public Administrator would claim a bond fee of \$265,000. When, as part of the usual course in probate proceedings, the Public Administrator asked for a bond fee as part of its first accounting in June 2009, the parties objected to the bond fee at the first opportunity.

After a thorough review of the matter's history, the probate court finally concluded the Public Administrator had waived the bond fee, either intentionally or by implied conduct. (*Smith v. Adventist Health System/West, supra*, 182 Cal.App.4th at p. 746; *Salton Community Services Dist. v. Southard* (1967) 256 Cal.App.2d 526, 532-533.) Substantial evidence supports the probate court's finding the Public Administrator waived the bond fee.

When the Public Administrator claimed the bond fee in June 2009, it had already been waived at the time of the appointment in July 2007. Under the particular facts of this case, waiver was established and the probate court acted within its equitable powers by denying the bond fee to the county.

VI

DISPOSITION

The Public Administrator and its lawyer were compensated in the amount of \$218,000 for administration of the subject estate. The Public Administrator waived any right to charge a bond fee.

We affirm the judgment and order the parties to bear their own costs on appeal.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

RICHLI
J.