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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

Conservatorship of the Person of JUNE E. GUINN.

M. TERRY CAMPBELL, as Conservator, etc., et
al.,

Petitioners and Respondents,

v.

LYNDA LUCIDO,

Objector and Appellant;

WESTERN SURETY COMPANY,

Real Party in Interest and Respondent.

F062901

(Super. Ct. Nos. 387352 &
388509)

Stanislaus County

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Loretta M. Bege, Judge.

Lynda Lucido, in pro. per., for Objector and Appellant.

Terry L. Campbell for Petitioners and Respondents M. Terry Campbell and Laurie Jamison.

Lewis Brisbois Bisgaard & Smith and Jerry Garcia for Real Party in Interest and Respondent Western Surety Company.

Appellant Lynda Lucido appeals from two orders entered by the trial court in April 2011 regarding the conservatorship and trust estate of June E. Guinn. One order terminated the conservatorship of the estate of Guinn, transferred remaining assets into the trust estate, and left intact the conservatorship of the person. The other order entered a judgment against appellant and in favor of a surety, Western Surety Company (Western), to recover sums that Western was required to pay under its surety bond after appellant was found liable for funds missing from the estate when she was conservator. As best as we can tell from her appeal, appellant contends that the proceedings below were invalid because, allegedly, her prior removal as conservator and trustee and the appointment of M. Terry Campbell (Campbell) to replace her were based on forged court orders and other fraud perpetrated on the court. We conclude that appellant did not meet her burden as the appealing party, failed to produce an adequate record to support her contentions, and forfeited the points raised on appeal by failure to present them in the trial court. For all of these reasons, the orders of the trial court are affirmed.

FACTS AND PROCEDURAL HISTORY

In 2006, appellant was appointed by the trial court to serve as conservator of the estate and person of June E. Guinn, appellant's mother. Appellant was also for a time the trustee of the Mitchell and June Guinn Family Living Trust (the trust).¹ In 2007-2008, the trial court apparently removed appellant from both of these positions and appointed Campbell as the new conservator and trustee, although appellant argues that the trial court's orders were invalid. Specifically, appellant contends that the prior orders of the trial court purportedly removing her as conservator and trustee and appointing Campbell to replace her were forged, fraudulent or nonexistent and therefore Campbell was never

¹ The conservatorship was Stanislaus County Superior Court case No. 387352, and the trust proceeding was Stanislaus County Superior Court case No. 388509.

validly appointed by the court. In short, appellant maintains that *she* (appellant) continues to be the true conservator and trustee on behalf of Guinn.

The scant record on appeal (consisting of a 39-page clerk's transcript) does little to inform us of the relevant procedural history and factual background of this case. We can merely note what is included in the record. The record includes a petition filed by Campbell in December 2007 seeking appointment as temporary conservator of the estate of June Guinn. Campbell's petition stated: "[C]onservatee [June Guinn] suffers from Dementia and is subject to Undue Influence. The prior conservator [(appellant)] took the ... conservatee to New Jersey and possibly absconded with ... conservatee's funds and failed to render an accounting." The record does not include the trial court's ruling on that petition. Even so, subsequent orders that *were* included in the record plainly reflect that Campbell was later serving in the capacity of June Guinn's conservator as well as trustee of the trust.

The record also includes a December 2008 order of the trial court on appellant's motion to vacate or reconsider numerous prior court orders in this case on grounds of, inter alia, extrinsic fraud. The trial court rejected appellant's claim of extrinsic fraud, finding that "[t]he evidence before the Court shows that [appellant] relocated frequently and was secretive concerning her location" and that she likely had actual notice of motions served "on locations where she had previously resided."² In passing, the trial court commented that it could not locate one of the prior orders at issue: an order removing appellant as trustee.³

² The trial court did grant a new hearing on the issue of the surcharge (finding of liability to the estate) previously ordered against appellant, and that new hearing was held in July 2009. Following the rehearing, the trial court confirmed appellant's liability in the amount of \$322,089.22.

³ Because the trial court could not locate that order and remarked that the matter must have been dropped, appellant now speculates there was foul play and that Campbell was *never* duly appointed to act as trustee. Presumably, appellant believes the orders

In addition to the matters noted above, the record on appeal includes a register of actions, a few miscellaneous minute orders, the petition for termination of conservatorship of the estate, etc., the two orders appealed from, and appellant's notice of appeal and designation of the record on appeal.

Although appellant's position is that the trial court's orders removing her as conservator and trustee and appointing Campbell to replace her were invalid, appellant failed to include in the record on appeal any of those prior orders or any of the transcripts of proceedings related thereto.⁴ However, *attached as exhibits* to appellant's opening brief are a number of purported trial court documents, including (i) an order to show cause ordering appellant to appear on December 6, 2007, and to show cause, if any, why the letters of conservatorship of June Guinn should not be revoked and a new conservator appointed;⁵ (ii) an order filed December 14, 2007, removing appellant as conservator of the person and estate of June Guinn; and (iii) an order filed April 15, 2008, removing her as trustee. We note that the attached documents were not part of an appendix under California Rules of Court, rule 8.124.⁶ Appellant did not elect to prepare an appendix, but rather requested that the appellate record would consist of a clerk's transcript. The records attached to her opening brief were not designated to be included as part of the clerk's transcript in "APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL."

attached to her brief and to Campbell's brief, apparently showing Campbell appointed as trustee, were a result of forgery.

⁴ Nor does the record on appeal include anything indicating that appellant raised this argument at any time below.

⁵ The order to show cause hearing appears to have been initiated by Sheila Guinn and Mitchell Guinn, appellant's brother and sister, and the order also directed appellant to produce the conservatee (June Guinn) at the hearing.

⁶ Unless otherwise stated, all further references to rules are to the California Rules of Court.

Likewise, Campbell attached exhibits to her respondent's brief, including the following trial court documents: (i) An order filed December 14, 2007, removing appellant as conservator and revoking her letters of conservatorship; (ii) An order filed April 15, 2008, removing appellant as trustee of the trust; (iii) An order filed April 15, 2008, appointing Campbell as trustee of the trust; (iv) An order filed November 19, 2010, appointing Campbell and another person, Laurie Jamison, as co-conservators of the person and estate of June Guinn. Western followed the same practice. Western attached as an exhibit to its respondent's brief the order dated July 24, 2009, by which the trial court imposed liability against appellant for funds missing from the conservatorship during appellant's tenure as conservator, and ordered Western to pay \$104,000 to the estate, the amount of its surety bond.

In attaching trial court documents that were not part of the certified record on appeal, the parties failed to follow the procedures for designating, correcting or augmenting an appellate record. (See rules 8.120, 8.121, 8.122, 8.155; cf. rule 8.204(d) [parties may attach to their briefs copies of documents that are "in the appellate record," not to exceed 10 pages].) Nor has there been, to our knowledge, a motion requesting judicial notice of any of the attached documents. (See, e.g., *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 744 [Court of Appeal refused to consider matters attached to briefs where no compliance with rules of court or procedures for requesting judicial notice]; see, e.g., rule 8.252 [procedures for seeking judicial notice by reviewing court]; Evid. Code, § 459 [same].) In any event, as explained below, even considering the uncertified documents attached to the parties' briefs, we would conclude that appellant failed to meet her burden on appeal.

Of course, appellant's appeal is *not* from any of the orders removing appellant or appointing Campbell, or from any other order attached to the parties' briefs. We now turn our attention to the April 2011 orders from which appellant *has* appealed.

The Orders From Which Appellant Appeals

1. *Order Granting Petition Regarding Conservatorship, Etc.*

On February 16, 2011, Campbell and Laurie Jamison, as co-conservators of the estate and person of June Guinn, filed a petition in the trial court. The petition began with the following recitals: “[Campbell and Laurie Jamison] are the Co-Conservators of the Person and Estate of JUNE E. GUINN. [Campbell] was appointed Conservator of the Estate on December 7, 2007. Letters of Conservatorship were issued to her on December 13, 2007. Laurie Jamison was appointed Conservator of the Estate on November 10, 2010 to serve with [Campbell]. [Campbell] and Laurie Jamison were appointed Conservators of the Person on November 10, 2010. New Letters of Conservatorship of the Person and Estate were issued to them on November 19, 2010, and at all times since their appointment, they have been acting as such Co-Conservators.” The petition further recited that the persons entitled to notice of the petition included the following relatives of June Guinn: appellant (adult daughter), Cheryle E. Morris (adult daughter), Mitchell E. Guinn (adult son), Sheila R. Guinn (adult daughter), and Murial Marcum (adult sister). The petition stated that “[t]he Conservatee is also entitled to the notice of these proceedings [and s]he will be provided notice; however, due to the actions of [appellant], the Conservatee’s address is being kept confidential.” The petition further noted that “[Campbell] is currently acting as Trustee of the MITCHELL AND JUNE GUINN FAMILY TRUST dated November 21, 1991 ..., having been appointed as such in Stanislaus County Superior Court Case No. 388509.”

The petition then outlined the nature of the relief sought. It explained: “The Conservatorship of the Estate of JUNE GUINN would no longer be required if the assets held in the Conservatorship estate were transferred to the Trustee of the Trust. The purpose of transferring the assets is to benefit the Conservatee and her estate by simplifying the management of Conservatee’s assets and eliminating the expense of two court accountings. The Trustee would continue to file accountings in the trust matter

(Case No. 388509) which would include all of the Conservatee's assets and all of the trust assets." Additionally, "[Campbell] further requests that the Court appoint LAURIE JAMISON as Co-Trustee of the Mitchell and June Guinn Family Trust dated November 21, 1991." The petition noted that an order settling the second account and report of conservator was filed on November 19, 2010, setting forth an accounting of the assets in the Conservatorship estate, which assets were reiterated in the petition.

The petition requested that the trial court make the following orders: (1) "The Conservatorship of the Estate of JUNE E. GUINN, Conservatee, be terminated"; (2) "The Conservatorship of the Person of JUNE E. GUINN, Conservatee, remain in place"; (3) "Amended Letters of Conservatorship be issued"; (4) "[Campbell and Laurie Jamison] be authorized and directed to deliver all Conservatorship estate assets in their possession to [Campbell], Trustee of the ... TRUST"; (5) "LAURIE JAMISON be appointed Co-Trustee of the ... TRUST, to act together with [Campbell]"; and (6) "On delivering the property as herein set forth and filing the proper receipts, [Campbell] and LAURIE JAMISON, as the Co-Conservators of the Estate, be discharged from their duties as Co-Conservators of the Estate and the surety on their bond discharged. However, said discharge will be subject to the Court's approval of the co-conservators' final account for the period of January 1, 2010 to the date of the transfer of the assets to the trust estate."

Appellant did not file any opposition to the petition and she did not appear at the April 7, 2011 hearing. The trial court granted the petition. The trial court's order granting the petition was entered on April 21, 2011.

2. *Order of Judgment for Western*

As summarized in the parties' briefs, appellant was found by the trial court to have failed to account for funds of the conservatee, June Guinn, during the period of time that she was acting as conservator of the estate of June Guinn. The trial court's order of July 24, 2009, surcharged appellant in the amount of \$322,089.22 and ordered Western to

pay to the estate the amount of \$104,000, the amount of its surety bond. Appellant did not appeal from that order.

Western thereafter brought a petition to obtain a judgment in the amount of \$104,000 plus its attorney fees and costs against appellant. The hearing of Western's petition was set for April 7, 2011. Appellant did not appear at the hearing or file any opposition. The trial court granted Western's petition. On April 21, 2011, the trial court entered its written "ORDER OF JUDGMENT" in favor of Western, against appellant, in the sum of \$148,433.10, and Western's surety bond in the amount of \$104,000 was ordered exonerated.

Appellant appealed from both of the above described trial court orders entered on April 21, 2011. Respondents Campbell and Western filed separate respondent's briefs.

DISCUSSION

I. Appellant Failed to Meet Burden on Appeal

"A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Because a trial court's order is presumed to be correct, error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, an appellant must affirmatively show prejudicial error based on adequate legal argument and citation to the record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556-557; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523.) These requirements apply equally to appellants acting without an attorney. (*McComber v. Wells, supra*, at p. 523.) When points are perfunctorily raised, without adequate analysis and authority or without citation to an adequate record, we pass them over and treat them as abandoned. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) Failure to provide

an adequate record on an issue requires that the issue be resolved against the appellant. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

Here, it appears that appellant is challenging the recent rulings below (entered April 21, 2011) on the ground that many years before that time, she was improperly removed as conservator and trustee and Campbell was not validly appointed to replace her. We reject appellant's contentions as wholly unsupported. Appellant has failed to (i) support her contentions by citing to portions of the record that demonstrate grounds for reversal, and (ii) provide relevant legal authority and argument in support of her position that there was reversible error. The record on appeal is inadequate to show any fraud (whether extrinsic or otherwise) or forgery. Even if we considered the uncertified documents attached to the parties' briefs, appellant's appeal—to the extent it is comprehensible—is premised entirely on her own vague conclusions and conjecture. If anything, the attached documents confirm that appellant was duly removed from her position and replaced by Campbell. We conclude that as to both of the orders appealed from, appellant has failed to meet her burden as the appealing party.

II. Points Not Raised Below Waived on Appeal

In this case, the two orders appealed from by appellant arose out of noticed hearings on April 7, 2011, and written orders were filed by the trial court on April 21, 2011. The record does not reflect that appellant filed any opposition, made any objection or even appeared at the hearing. In short, it appears the issues raised by appellant on appeal were not presented in the trial court. We therefore decline to consider them. An appellate court generally will not consider a matter presented for the first time on appeal (*Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 143), and a failure to raise an issue or argument in the trial court will result in it being forfeited on appeal (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 226; *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1381 [failure to raise issue in trial court *waives* the point on appeal]). Moreover,

“[t]he general rule that a legal theory may not be raised for the first time on appeal is to be stringently applied when the new theory depends on controverted factual questions whose relevance thereto was not made to appear at trial. [Citation.]” (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 780.) That is clearly the case here. We hold that appellant’s contentions are forfeited on appeal.

Further, the trial court would have been well aware of who was duly appointed by it to act as conservator and trustee in this matter. Appellant’s assertions that she was the true conservator/trustee, not Campbell, and/or that Campbell’s appointment was accomplished by fraud or forgery, if properly raised below, could have been easily disposed of by the trial court. Although no error was shown in this case, the following quotation from a respected treatise is otherwise on point: “An appellate court will ordinarily not consider procedural defects or erroneous rulings in connection with relief sought or defenses asserted, where an objection could have been, but was not, presented to the lower court by some appropriate method. [Citations.] [¶] ... [¶] ... Often ... the explanation [for this rule] is simply that *it is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial.*” (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400, pp. 458-459, italics added.)

DISPOSITION

The orders of the trial court are affirmed. Costs on appeal are awarded to Campbell and Western.

Kane, Acting P.J.

WE CONCUR:

Detjen, J.

Franson, J.