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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

ESTATE OF LORRAINE RUTH FORESTIERE,
Deceased.

ROSARIO RICARDO FORESTIERE, as
Executor, etc.,

Petitioner and Respondent,

v.

ANDRE FORESTIERE,

Objector and Appellant.

F070300

(Super. Ct. No. 12CEPR01040)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Robert H. Oliver, Judge.

Andre Forestiere, in Pro. Per., for Objector and Appellant.

Gilmore Magness Leifer, Ryan M. Janisse and David M. Gilmore, for Petitioner and Respondent.

Appellant Andre Forestiere (Andre) appeals from the probate court's orders that (1) appointed respondent Rosario Ricardo Forestiere (Rosario) executor of the will of Lorraine Forestiere (Lorraine) and (2) denied Andre's opposition and request to remove Rosario as administrator of Lorraine's estate and disqualify him as executor. We affirm.

FACTS AND PROCEDURAL HISTORY

Rosario's uncle built a complex of underground rooms, passages, and gardens in Fresno known as the Forestiere Underground Gardens (the Gardens). Rosario and his brother inherited a parcel of land that included the Gardens and, by the 1990's, Rosario was the sole owner of the Gardens.¹

Lorraine and Rosario were married at the time of her death on September 21, 2012. They had six adult children together, including Andre. According to Rosario, he and Lorraine had been living separately by amicable agreement for several months before Lorraine's death, but they had no plans to divorce.

On November 15, 2012, Rosario filed a petition for letters of administration and an ex parte petition for letters of special administration for Lorraine's estate. At a hearing on December 4, 2012, the probate court granted Rosario's ex parte petition for letters of special administration. Andre attended the hearing. The court ordered that any documents removed from Lorraine's house be lodged at the office of Rosario's attorney and that Rosario only visit Lorraine's house in the company of his attorney.

On December 18, 2012, Andre filed in propria persona an opposition to Rosario's petitions based on the allegation Rosario had "a conflict of interest in that he may be ordered by the court to restore real property interests to [Lorraine's] estate." In a supporting declaration, Andre stated the relationship between his parents "was not amicable." He explained that, in 2008, Lorraine signed an interspousal transfer grant

¹ Rosario's brother petitioned for partition of the property, and the trial court awarded the Gardens to Rosario. This court affirmed the trial court's order in 1993.

deed giving Rosario her interest in the Gardens in exchange for his interest in their residence on Robinwood Lane. Andre further asserted that, later on the same day she signed the property transfer documents in 2008, Lorraine told Andre “she could no longer take the verbal abuse from [Rosario].”

Andre apparently withdrew his objection to Rosario being appointed administrator of Lorraine’s estate as a minute order reflects that Rosario and Andre informed the court they had “reached an agreement” at a hearing on Rosario’s petition held January 3, 2013. (There is no reporter’s transcript of the hearing.) The court then granted Rosario’s petition for letters of administration. Rosario was appointed administrator with limited authority, and letters of administration issued January 7, 2013.

On March 18, 2013, Rosario filed an inventory and appraisal identifying the only assets of the estate as 100 percent interest in (1) the property on Robinwood Lane, appraised at \$120,000, and (2) a Ford Mustang, appraised at \$2,000.

Andre and Rosario believed Lorraine died intestate. However, in November 2012, the law firm of Helon and Manfredo lodged with the probate court a will signed by Lorraine and witnessed in 1965 (the 1965 will). At some point, Rosario became aware of the 1965 will and, on March 19, 2014, he filed an amended petition for probate of will and for letters testamentary. In the 1965 will, Lorraine left certain real property to her brother² and left the remainder of her estate to Rosario. She also named Rosario as the executor of the will.

On May 7, 2014, Andre filed an “Opposition to Petition to Administer Estate and to Remove and Disqualify Administrator/Executor and to Appoint a New Executor” (Opposition). Andre alleged, “Rosario has a conflict of interest and ... he, together with other members of his family, has engaged in a conspiracy to commit elder abuse upon

² Lorraine apparently had no ownership interest in the property, described in the 1965 will as Lorraine’s own separate property located in Bernhard Gardens, at the time of her death.

[Lorraine] in an effort to acquire and control [Lorraine's] community property interests in the real property commonly known as the ... Gardens." Andre asserted that the probate court should treat Rosario as having predeceased Lorraine pursuant to the elder abuse statutes and Probate Code section 259.³ He requested that "Lorraine's title to the Gardens be restored," that the court create a trust to manage her interests in the Gardens, and that "the court award the trust one half of the revenues and royalties derived from the Gardens since [Lorraine] was wrongfully deprived of her title." Andre also claimed that Rosario's abuse and malicious conduct merited the imposition of treble damages and punitive damages, and he sought a new executor to be "directed to pursue claims against all parties who aided and abetted Rosario's wrongful conduct."

On June 6, 2014, Rosario filed a response to Andre's Opposition. Rosario denied Andre's allegations of misconduct and described the Opposition as "little more than an attempt by a disgruntled child to interfere with the administration of his mother's estate." Rosario also argued Andre's allegations were irrelevant to the issue before the court, which was whether the court should appoint him executor upon the 1965 will's admission to probate. Rosario noted that he was already serving as the administrator of the estate and that Lorraine designated him executor in the 1965 will. He argued that, as the surviving spouse, he was entitled to priority for appointment as administrator (§ 8461, subd. (a)) and, as the person nominated to be the executor by the 1965 will, he had the right to appointment as executor (§ 8420). Rosario further asserted there were no grounds to disqualify him from serving as the executor.

On June 12, 2014, Andre filed a reply in support of the Opposition. He argued that Rosario violated a court order by going to Lorraine's house without his attorney and accused Rosario of "deliberately remov[ing] documents which would substantiate the claims against him." Andre reiterated his allegation of elder abuse and argued he had

³ Further statutory references are to the Probate Code unless otherwise noted.

prima facie evidence of past financial abuse by Rosario toward his spouse, referring to the transfer of Lorraine's interest in the Gardens to Rosario in 2008. He further asserted that recorded statements by two of his sisters confirmed his allegations that Lorraine "was subject to fear in exchanging her community property interests in the Gardens for the residence" and she "did not voluntarily consent to the exchange."

On June 26, 2014, the probate court granted Rosario's amended petition for probate of will and for letters testamentary and denied Andre's Opposition. A hearing on these matters took place that day, but there is no reporter's transcript of the hearing. In the probate examiner's notes for Andre's Opposition, the examiner noted the following under the heading "NEEDS/PROBLEMS/COMMENTS":

"1. This petition discusses property that is not an asset of [Lorraine's] estate, and also alleges fraud and elder abuse, which must be addressed under proper authority in civil court.

"2. [Andre] requests that a new executor be appointed; however, [Andre] did not file the mandatory Judicial Council form Petition for Probate or Letters of Administration (DE-111), did not serve Notice of Petition to Administer Estate, and did not publish, etc.

"3. [Andre] requests legal fees; however [Andre] is self-represented.

"4. Notice of hearing was served on 6-12-14, which did not provide the 15 days' notice required by law."

On July 10, 2014, the probate court filed an order appointing Rosario executor of the 1965 will. Letters testamentary issued July 22, 2014.

On July 11, 2014, Andre filed a "Motion to Vacate Order and to Correct Clerical Error." The motion was "made on the grounds that [Andre] presented uncontroverted evidence that [Rosario] financially abused [Lorraine], and breached his duties as spouse and administrator." Rosario opposed the motion. A hearing on Andre's motion to vacate was held August 11, 2014. The same day, Andre requested that the court issue a

statement of decision for its ruling on his motion. The probate court denied the motion to vacate and denied Andre's request for a statement of decision.

On August 25, 2014, Andre filed a notice of appeal from the probate court's orders appointing Rosario executor and denying Andre's Opposition.

DISCUSSION

“The rule is universal that the person named as executor in a will has the right so to act in the absence of statutory disqualification.” (*Estate of Shimun* (1977) 67 Cal.App.3d 436, 442; see § 8420 [“The person named as executor in the decedent's will has the right to appointment as personal representative.”].) Here, Lorraine expressly appointed Rosario executor in the 1965 will, and Andre does not challenge the validity of the will. Accordingly, the probate court correctly appointed Rosario executor unless there were statutory grounds making him ineligible for appointment. (See §§ 8402, 8502; *Baker Manock & Jensen v. Superior Court* (2009) 175 Cal.App.4th 1414, 1423.)

Under section 8402, a person is not competent to act as an executor in certain circumstances, including existence of grounds for removal of the person from office under section 8502.⁴ Section 8502, in turn, provides:

“A personal representative may be removed from office for any of the following causes:

“(a) The personal representative has wasted, embezzled, mismanaged, or committed a fraud on the estate, or is about to do so.

“(b) The personal representative is incapable of properly executing the duties of the office or is otherwise not qualified for appointment as personal representative.

⁴ The complete list of circumstances that render a person incompetent to act as a personal representative is as follows: “(1) The person is under the age of majority. [¶] (2) The person is subject to a conservatorship of the estate or is otherwise incapable of executing, or is otherwise unfit to execute, the duties of the office. [¶] (3) There are grounds for removal of the person from office under Section 8502. [¶] (4) The person is not a resident of the United States. [¶] (5) The person is a surviving partner of the decedent and an interested person objects to the appointment.” (§ 8402, subd. (a).)

“(c) The personal representative has wrongfully neglected the estate, or has long neglected to perform any act as personal representative.

“(d) Removal is otherwise necessary for protection of the estate or interested persons.

“(e) Any other cause provided by statute.”

On appeal, Andre must affirmatively demonstrate the probate court committed reversible error by an adequate record. (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 [“It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record.”].) We presume the probate court’s orders are correct, and we indulge all intendments and presumptions to support the court’s orders on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

In this case, there is no reporter’s transcript of the hearing on June 26, 2014, during which the parties argued Rosario’s amended petition for probate of will and letters testamentary and Andre’s Opposition and the probate court granted Rosario’s petition and denied Andre’s Opposition. Nor is there a statement of decision. Nothing in the record shows what the parties said at the hearing or the probate court’s reasoning for ruling as it did.

Rosario argues the state of the appellate record is fatal to Andre’s appeal. We agree. “In numerous situations, appellate courts have refused to reach the merits of an appellant’s claims because no reporter’s transcript of a pertinent proceeding or a suitable substitute was provided.” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186–187 [citing cases].) ““In the absence of a contrary showing in the record, all presumptions in favor of the trial court’s action will be made by the appellate court. “[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.” [Citation.] ... “A necessary corollary to this rule is that if the record is

inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” [Citation.] ‘Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].’ [Citation.]” (*Ibid.*)

Because the appellate record in this case is not adequate to conduct a meaningful review of the probate court’s orders, we must resolve the appeal against Andre. We reject Andre’s argument, raised only in his reply brief, that the record is adequate because “there was no evidentiary hearing of [his] motion to oppose and disqualify [Rosario].” Andre does not claim the court denied him an opportunity to argue in favor of his Opposition at the hearing on June 26, 2014, and he offers no authority for the proposition that the probate court was required to hold an evidentiary hearing before appointing Rosario executor. It is Andre’s burden to show error by the probate court in this appeal, and he has failed to do so.

DISPOSITION

The judgment is affirmed. Rosario is awarded costs on appeal.

KANE, J.

WE CONCUR:

LEVY, Acting P.J.

PEÑA, J.