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

Estate of EDDIE CHARLES BROWN, SR.,  
Deceased.

EDDIE BROWN, JR.,

Petitioner and Respondent,

v.

DAVID BROWN, as Administrator, etc.,

Objector and Appellant.

F070668

(Super. Ct. No. 387661)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Moorad, Clark & Stewart, Lawrence T. Niermeyer for Objector and Appellant.

No appearance for Petitioner and Respondent.

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David Brown, the administrator of his deceased father's estate, appeals from a judgment directing a payment to his brother, Eddie Brown, Jr., and two payments to the

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\*Before Gomes, Acting P.J., Detjen, J., and Smith, J.

estate. (For the sake of clarity, we will refer to the parties as David and Eddie, Jr.) David has not demonstrated error. The judgment will be affirmed.

### **FACTS AND PROCEDURAL HISTORY**

According to the trial court's statement of decision, Eddie Charles Brown, Sr., died intestate on November 30, 2005. He had three sons: David, Eddie Jr., and Eddie Brown III. David was appointed administrator of the estate on April 4, 2006. Eddie Brown III is not a party to this litigation. According to briefs filed by the parties in the trial court, Eddie Brown III accepted a \$10,000 payment in exchange for a release of his claim on the estate.

The estate consisted of a house in Modesto, a mobile home, a pickup truck, and some cash and other personal property. David filed an inventory of the estate in the superior court on August 1, 2006. It showed the total value of the estate as \$371,190.64, consisting of the following items: house, \$324,000; furnishings, \$1,500; truck, \$8,000; mobile home, \$8,000; cash in bank accounts, \$29,690.64.

In February 2008, David bought the house from the estate for \$200,000. (This appeal does not present the question of whether the sale price, which is less than the 2006 appraisal value, correctly reflects the decline in the real estate market from 2006 to 2008.) In a court filing describing the proposed sale, David stated he would "purchase from the other beneficiary his interest (Eddie Brown, Jr.) in the residence ...."

Eddie, Jr., filed a petition in the trial court on April 9, 2012. It alleged that David had not filed an account in six years and had not brought the administration of the estate to a close. Further, David allegedly neglected and mismanaged the estate and failed to keep the beneficiaries informed. He also allegedly took estate assets for himself unlawfully and violated Probate Code section 9880 by buying the house without court approval. The petition requested that the court make orders to do all the following: Remove David and replace him with a special administrator; compel David to file an

accounting; charge David for losses to the estate caused by his breaches of fiduciary duty; and deny David administration fees and attorney's fees.

The trial court conducted a hearing, which concluded on February 22, 2013. No reporter's transcript of the hearing is included in the appellate record.

The court filed a statement of decision on November 25, 2013, and an amended statement of decision on August 18, 2014. The court denied the request to remove David as administrator, but ordered him to post a \$10,000 bond. It also rejected the request to deny attorney's fees to David, but it limited David's administrator's fee to \$500. The court declined to order David to make payments related to funeral expenses and home furnishings. It directed that if one party takes the truck, the other party will receive \$8,000 from the estate, and that if the truck is sold, the proceeds will be split equally between the parties.

The court then ordered David to make three payments, which are the subject of this appeal. First, it ordered him to reimburse the estate for \$6,000 withdrawn from the estate's accounts in April 2008. David told the court he had no receipts for this money and did not know how he spent it. Next, David was required to repay to the estate \$47,422.02 withdrawn between June 2008 and August 2010. Again, David provided no receipts and no satisfactory explanation of these withdrawals. Finally, the court ordered David to pay \$61,715.71 directly to Eddie, Jr. This was Eddie, Jr.'s, share of the proceeds of the house sale (reflecting a deduction for half the outstanding balance of the home loan). David had distributed his portion of the sale proceeds to himself, but had never distributed Eddie, Jr.'s, portion. The court rejected David's claim that the missing \$6,000 and \$47,422.02 were really undocumented partial payments to Eddie, Jr., of his share of the house sale proceeds.

The court rejected Eddie Jr.'s request to order David to pay liquidated damages of \$400,000, stating that despite David's failure to follow the statutory procedure for selling the house, there was no fraud. It also rejected David's requests for two offsets against

Eddie, Jr.'s, share of the estate, concluding that these requests were based on payments made on Eddie, Jr.'s, behalf by the decedent while the decedent was still alive, and that the payments did not constitute advancements against Eddie, Jr.'s, inheritance. Further, the court rejected David's contention that Eddie, Jr.'s, share should be reduced for rent Eddie, Jr., failed to pay the estate while living in the house after the decedent's death.

Finally, the court granted David's request for an offset of \$19,488.99. Based largely on Eddie, Jr.'s, testimony at the hearing, the court found that David had previously made distributions totaling this amount to or on behalf of Eddie, Jr.

On October 21, 2014, the court filed its judgment reflecting the above orders. David appealed. Eddie, Jr., did not file a brief in the appeal.

### **DISCUSSION**

#### ***I. Sufficiency of evidence supporting the judgment***

David contends that no substantial evidence supported the court's findings that he owed \$61,715.71 to Eddie, Jr., and \$6,000 plus \$47,422.02 to the estate. This contention is without merit.

When considering a challenge to the sufficiency of the evidence to support a judgment, we review the record in the light most favorable to the judgment and decide whether it contains substantial evidence from which a reasonable finder of fact could make the necessary finding beyond a reasonable doubt. The evidence must be reasonable, credible, and of solid value. We presume every inference in support of the judgment that the finder of fact could reasonably have made. We do not reweigh the evidence or reevaluate witness credibility. We cannot reverse the judgment merely because the evidence could be reconciled with a contrary finding. (*People v. D'Arcy* (2010) 48 Cal.4th 257, 293.)

The burden is on David as the appellant to demonstrate error. (*Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 712.) ““A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to

which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

In this case, David cannot sustain his burden of demonstrating an insufficiency of evidence because he did not submit a reporter’s transcript of the proceedings in the superior court. “Where no reporter’s transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*,” and consequently an appellant will be precluded from raising the issue of the sufficiency of the evidence. (*In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) This is because “it is presumed that the unreported trial testimony would demonstrate the absence of error.” (*Ibid.*)

The error David asserts is not apparent on the face of the existing appellate record. He claims the trial court must have made an “error in calculation” because the total of the three amounts the trial court ordered him to pay—\$6,000, \$47,422, and \$61,715.71—“exceeds the net value of the [e]state,” and therefore is necessarily more than the half share of the estate to which Eddie, Jr., is entitled. This argument makes little sense. The judgment does not order David to pay the sum of the three amounts to Eddie, Jr. It orders him to pay Eddie, Jr., \$61,715.71. The remaining payments—\$6,000 and \$47,422—are to be made to the estate. The judgment does not purport to determine how that money will ultimately be distributed, and this appeal presents no question on that point. The court has merely ordered David, who has already received his half of the house sale proceeds, to pay the same to Eddie, Jr., and to reimburse the estate for funds David withdrew and could not account for. There is no reason why the three figures would add up to Eddie, Jr.’s, share of the estate.

Further, David’s argument is premised on a calculation of the estate’s value he sets out in his appellate brief, and we cannot accept this calculation. It is based on a spreadsheet David submitted to the trial court and “unresolved expenses” described in the appellate brief. But the spreadsheet is hearsay (not even supported by a declaration);

statements of appellate counsel in a brief are not evidence; and evidence in the transcript of the oral proceedings could present a completely different picture of the value of the estate. The record David has presented to this court is inadequate to support any determination that the trial court's judgment has the effect of awarding Eddie, Jr., more than he is entitled to receive.

David also argues that he must have withdrawn the \$6,000 and the \$47,422.02 after depositing the \$61,715.71 that represented Eddie, Jr.'s, share of the house sale, because, prior to that deposit, the balance in the estate's accounts was less than the sum of \$6,000 and \$47,422.02. This is a factual issue about which we cannot find error in the absence of a complete record. In any event, we do not see how David's claim on this point conflicts with anything in the trial court's judgment or statement of decision.

## ***II. Prematurity***

David argues that "the [c]ourt's [j]udgment and distribution of the [e]state was premature" because the court had not yet heard a petition for the estate's settlement. He says there are additional expenses that have been or will be submitted for the court's approval, and the court should not have made the orders at issue until after making decisions about those expenses.

David does not, however, cite any authority, or even make any legal argument, supporting the notion that the judgment here at issue is a judgment that can be entered only upon the final settlement of the estate or only after consideration of all expenses the administrator has submitted or will submit. His claim on this point therefore has not been adequately briefed, and we will not address it further. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2.)

## **DISPOSITION**

The judgment is affirmed. Costs on appeal, if any, are awarded to respondent Eddie Brown, Jr.