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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of MARJORIE IRENE CORBIN,
Deceased.

CHET CORBIN, as Administrator,

Petitioner and Respondent,

v.

PATRICIA ANN CORBIN,

Objector and Appellant.

G046842

(Super. Ct. No. A208972)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Appeal dismissed.

Patricia Ann Corbin, in pro. per., for Objector and Appellant.

Tania L. Whiteleather for Petitioner and Respondent.

* * *

Patricia Ann Corbin appeals from the denial of her motion to reconsider the trial court's order authorizing Chet Corbin, the administrator of the estate of Marjorie Irene Corbin, to pay both ordinary and extraordinary attorney fees to his counsel.¹ We dismiss Patricia's appeal for lack of appellate jurisdiction.

FACTS

When Chet, as the administrator of Marjorie's probate estate, filed a fourth supplement to his amended first and final account, he requested, inter alia, authorization to pay his attorney from the estate: (1) \$2,331.47 as statutory fees and \$855.00 for costs advanced to the estate; and (2) \$14,115.00 for extraordinary services to the estate and \$971.45 in extraordinary costs advanced. Patricia objected to the requested attorney fees, and, on July 27, 2011, the court conducted a trial on those objections. The court approved Chet's request and Patricia's objections were overruled. The court's formal order, signed and filed on August 15, 2011, authorized Chet to pay his counsel \$855.00 in costs, \$2,331.47 for statutory fees, and \$15,000 for extraordinary fees.

The clerk's transcript reflects that Patricia filed an amended motion for reconsideration on November 10, 2011, which the court denied on December 8, 2011.²

On February 28, 2012, Patricia filed a notice of appeal specifying the December 8, 2011 order denying reconsideration as the order from which her appeal was taken. On April 17, 2012, Patricia filed a "corrected" notice of appeal specifying December 8, 2011, as the date of the order from which the appeal was taken, but

¹ For ease of reference and greater clarity, we refer to the parties by their first names. No disrespect is intended.

² A copy of the motion for reconsideration is not included in the clerk's transcript. We know of its existence only because the clerk's transcript includes the minute order denying the motion.

inconsistently describing the order as the “Final Accounting of the Marjorie Corbin Estate; Adm. Of Estates Sect. 10810(15) Disc of Court.” Presumably, this description refers to the order made on August 15, 2011, after trial on Patricia’s objections to Chet’s accounting.

In Chet’s respondent’s brief, he argued, inter alia, that Patricia’s appeal was untimely. But he did not move to dismiss, and Patricia’s reply brief virtually ignored the issue, contending that Chet’s counsel “wastes the Court’s time in trying to tell them that the Appeal was not filed timely” Because timeliness of the appeal is fundamental to our jurisdiction, and with solicitude to Patricia who is self-represented, we advised the parties on September 28, 2012, that it appeared this appeal must be dismissed for lack of appellate jurisdiction, and invited the parties to file letter briefs addressing this issue once again. Both parties accepted the invitation. Chet’s response was presented as a motion to dismiss the appeal. We now grant the motion and dismiss the appeal.

DISCUSSION

Effective January 1, 2012, the California Legislature made clear that an order denying a motion for reconsideration is “not separately appealable.” (Code Civ. Proc., § 1008, subd. (g).) Long before the Legislature acted, the great weight of authority also held that such orders were not appealable. (See, e.g., *Annette F. v. Sharon S.* (2005) 130 Cal.App.4th 1448, 1459; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1242; *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 333, fn. 1; *Crotty v. Trader* (1996) 50 Cal.App.4th 765, 769; *Hughey v. City of Hayward* (1994) 24 Cal.App.4th 206, 210; *Estate of Simoncini* (1991) 229 Cal.App.3d 881, 891; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1550, fn. 2; *Rojes v. Riverside General Hospital* (1988) 203 Cal.App.3d 1151, 1161, overruled on another ground in *Passavanti v. Williams* (1990)

225 Cal.App.3d 1602, 1607; but see *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 710-711 [order appealable if motion based on new facts].)

Thus, whether we base our ruling upon the great weight of authority existing at the time the subject order was made, or upon the currently operative Legislative command, the order denying Patricia's motion for reconsideration is not separately appealable.

But Patricia complains she was never given notice of entry of the August 15, 2011 order. She also argues that Code of Civil Procedure section 1008, subdivision (g), after stating that the order denying reconsideration is not separately appealable, goes on to provide: "[I]f the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order."

The problem with Patricia's argument, of course, is that she never filed a timely appeal from the August 15, 2011 order. California Rules of Court, rule 8.104 governs the time in which an appeal must be taken. If notice of entry of the appealable order is given by either the clerk or a party, the notice of appeal must be filed within 60 days of the notice of entry. Where no notice has been given by the clerk of court or by a party, the notice of appeal must be filed no later than 180 days after entry of the appealable order. (Cal. Rules of Court, rule 8.104(a)(1)(A)(B)(C); *Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 582 ["The latest possible time within which a notice of appeal must be filed is 180 days after entry of judgment or entry of an appealable order"].) Thus, assuming Patricia was never served with a notice of entry of the August 15, 2011 order, her last day to file a notice of appeal was February 13, 2012.³ Thus, even if we liberally construe her notice of appeal as being taken from the August 15, 2011 order, her appeal, filed on February 28, 2012, is 15 days late. "If a notice of

³ February 11, 2012, the 180th day, was a Saturday.

appeal is filed late, the reviewing court must dismiss the appeal.” (Cal. Rules of Court, rule 8.104(b).) We lack jurisdiction to consider it. (*Van Beurden Ins. Services v. Customized Worldwide Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.)

Finally, Patricia’s motion for reconsideration did not extend the time to appeal. California Rules of Court, rule 8.108(e) provides that a “valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a)” extends the time to appeal to a date no later than “180 days after entry of the appealable order.” (Cal. Rules of Court, rule 8.108(e)(3).) As noted above, the 180 days expired on February 13, 2012.

DISPOSITION

The appeal is dismissed. Chet’s motion for sanctions is denied. Chet shall recover costs incurred on appeal.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.