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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SILVIA MENDOZA, as Trustee, etc.,

Plaintiff and Appellant,

v.

FANNY LUQUIN, as Trustee, etc.,

Defendant and Respondent.

G048229

(Super. Ct. No. 30-2011-00567851)

O P I N I O N

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

James G. LeBloch for Plaintiff and Appellant.

Peter J. Linden & Associates, Peter J. Linden; and Vicki Marolt Buchanan for Defendant and Respondent.

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Appellant Silvia Mendoza and respondent Fanny Luquin are two of Carmen Novelo's six adult children.¹ In 2004, Carmen placed her principal assets—two parcels of real property in Santa Ana, California—in a revocable trust that directed the trustee to distribute all trust assets equally among her children upon her death. In 2011, Carmen established a second revocable trust and executed a pourover will that left the residual of her estate to the second trust. The second trust declared Carmen's intent to fund it with the identical two parcels of real property she previously had placed in her first trust, and it directed the trustee to distribute all assets equally among her children upon her death, except Luquin. The second trust and pourover will explained Carmen intentionally omitted Luquin and disinherited her based on a gift Carmen made to Luquin during her lifetime.

After Carmen's death, Mendoza filed a petition under Probate Code section 17200² seeking a judicial determination the two parcels of real property were part of the second trust and should be distributed under its terms. Luquin moved for summary judgment on the ground the first trust governed the distribution of the two properties because the second trust did not revoke or amend the first trust as a matter of law. According to Luquin, no revocation or amendment occurred because the second trust did not refer to the first trust and title to the parcels of real property remained in the name of the first trust's trustee at Carmen's death. The trial court agreed and granted Luquin's summary judgment motion.

We reverse. As explained below, Luquin failed to meet her initial burden on summary judgment because she failed to address Mendoza's specific allegations in her

¹ We will refer to Carmen and her children who share the Novelo name by their first names to avoid confusion. No disrespect is intended. We will refer to all other individuals by their last names.

² All statutory references are to the Probate Code unless otherwise stated.

petition that Carmen intended to revoke the first trust because of her declared intent to fund the second trust with the identical properties she previously had placed in her first trust, and her decision to change the distribution of trust assets from the distribution she created in the first trust. Consequently, Luquin failed to show as a matter of law the second trust was invalid.

I

FACTS AND PROCEDURAL HISTORY

In October 2004, Carmen established the “Carmen Novelo Revocable Living Trust” (2004 Trust), naming herself as the sole settlor and trustee, and Luquin as successor trustee. Upon Carmen’s death, the 2004 Trust instructed the trustee to distribute all trust assets equally among her six adult children: Mendoza, Luquin, Alejandrina Sevilla, Walter Novelo, Carlos Novelo, and Abraham Novelo.³ The 2004 Trust authorized Carmen to amend or revoke its terms at any time through a signed writing delivered to the trustee.

At the time Carmen established the 2004 Trust her primary assets were two parcels of real property: her residence located on Beverly Place in Santa Ana (Beverly Property) and a three unit apartment building located on Cedar Street in Santa Ana (Cedar Property). On the same day she established the 2004 Trust, Carmen executed a quitclaim deed transferring the Beverly Property to herself as trustee of the 2004 Trust. In June 2008, Carmen executed a grant deed transferring the Cedar Property to herself as trustee of the 2004 Trust. Carmen recorded these deeds shortly after executing them.

In February 2011, Carmen established a second trust, the “Carmen Novelo Revocable Trust” (2011 Trust), naming herself as trustor, Walter as trustee, and Mendoza

³ Carmen had a seventh child who died before she established the 2004 Trust.

as successor trustee. The 2011 Trust states Carmen “hereby transfers” to the 2011 Trust “the assets listed in Attachment A.” The only two assets listed in the attachment are the Beverly and Cedar Properties Carmen previously transferred to the 2004 Trust.⁴ Neither Carmen nor anyone else purporting to act as trustee of the 2004 Trust executed a deed or otherwise conveyed the Beverly Property or Cedar Property to the 2011 Trust. The 2011 Trust did not refer to the 2004 Trust or expressly revoke or amend any previous trusts Carmen established.

The 2011 Trust expressly excluded Luquin as a beneficiary and directed the trustee to distribute the trust assets equally among Carmen’s five other adult children upon her death. It explained Luquin’s omission as follows: “After due consideration, the Trustor has specifically decided to exclude FANNY LUQUIN as a beneficiary under this revocable trust based on the fact that [a] distribution of assets in prior years ha[s] been provided to her.” In 2008, Carmen refinanced the Cedar Property and gave Luquin approximately \$52,000 to use in purchasing a home.

At the same time she executed the 2011 Trust, Carmen also executed a pourover will (2011 Will), which devised “all of the rest, residue and remainder of my estate” to the trustee of the 2011 Trust. The 2011 Will stated Carmen “intentionally omitted . . . FANNY LUQUIN . . .” from the gifts and bequests made in the 2011 Will and 2011 Trust, and “I hereby generally and specifically disinherit [Luquin]” Although the 2011 Will expressly revoked all wills and codicils Carmen previously

⁴ In pertinent part, the 2011 Trust states, “The Trustor hereby transfers his separate property as designated in the above mentioned judgment to an [*sic*] revocable intervivos trust as designated in this Trust Agreement and in accordance with the assets listed in Attachment A.” The only attachment to the 2011 Trust listing assets is entitled “Schedule A.” At this point, no one suggests the potentially confusing references to “his separate property” and “the above mentioned judgment” or the inconsistent references to “Attachment A” and “Schedule A” are anything other than careless draftsmanship.

made, it did not purport to revoke or amend any trusts and did not refer to the 2004 Trust. The 2011 Will named Walter as executor and Mendoza as successor executor.

Carmen passed away in October 2011, and Luquin succeeded her as trustee of the 2004 Trust. Two months later, Walter passed away and Mendoza succeeded him as trustee of the 2011 Trust. In May 2012, Mendoza filed a petition under section 17200 seeking a judicial determination the Beverly and Cedar Properties were assets of the 2011 Trust subject to distribution under the terms of that trust. The petition alleged the 2011 Trust revoked or amended the 2004 Trust by declaring Carmen's intent to fund the 2011 Trust with the Beverly and Cedar Properties and by directing distributions to her children inconsistent with the earlier distributions she specified in the 2004 Trust. The petition further alleged the 2011 Will's pourover provision made the Beverly and Cedar Properties assets of the 2011 Trust upon Carmen's death because the 2011 Trust had revoked or amended the 2004 Trust and made those properties part of Carmen's residual estate.

Luquin objected to the petition, alleging Carmen never revoked or amended the 2004 Trust and therefore that trust became irrevocable upon her death. Luquin further alleged the 2011 Trust was invalid because Carmen "was a victim of undue influence and was mentally incompetent to contract and/or to create or revoke a trust" when she executed the 2011 Trust. In September 2012, Luquin filed a summary judgment motion arguing the petition lacked merit because the 2011 Trust did not revoke or amend the 2004 Trust as a matter of law.⁵ The motion did not raise the issue of undue influence or incompetency.

The trial court granted the motion, concluding the 2011 Trust did not amend or revoke the 2004 Trust because the undisputed evidence showed the 2011 Trust

⁵ Luquin's motion also sought summary adjudication, but failed to identify an issue on which the court could grant summary adjudication. The parties' briefs do not address the summary adjudication request and therefore we do not address it.

did not mention the 2004 Trust, title to the Beverly and Cedar Properties remained in the name of the 2004 Trust's trustee at Carmen's death, and Carmen never informed the attorney who drafted the 2011 Trust about the 2004 Trust or that the trustee of the 2004 Trust held title to the Beverly and Cedar Properties. The trial court also sustained several of Luquin's evidentiary objections and excluded the evidence Mendoza submitted in opposition to the motion. Mendoza timely appealed from the trial court's order granting the summary judgment motion and denying Mendoza's petition.

II

DISCUSSION

A. *Governing Summary Judgment and Trust Interpretation Principles*

““The purpose of a summary judgment proceeding is to permit a party to show that *material* factual claims arising from the pleadings need not be tried because they are not in dispute.” [Citations.]’ [Citations.]” (*Ahn v. Kumho Tire U.S.A., Inc.* (2014) 223 Cal.App.4th 133, 136, original italics (*Ahn*).) A defendant moving for summary judgment bears the initial burden to show the plaintiff's action has no merit. (*Ibid.*) The defendant can meet that burden by either showing the plaintiff cannot establish one or more elements of his or her cause of action or there is a complete defense to the claim. (*Ibid.*; Code Civ. Proc., § 437c, subd. (p)(2).) To meet this burden, the defendant must present evidence sufficient to show he or she is entitled to judgment as a matter of law. (*Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 847-848 (*Eriksson*).)

Once the defendant meets that burden, the burden shifts to the plaintiff to present evidence establishing a triable issue exists on one or more material facts. (*Ahn, supra*, 223 Cal.App.4th at p. 136; Code Civ. Proc., § 437c, subd. (p)(2).) The plaintiff opposing the motion has no burden to present any evidence until the defendant satisfies his or her initial burden. (*Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 940 (*Hawkins*).)

We review a trial court’s ruling on a summary judgment motion de novo. (*Hawkins, supra*, 144 Cal.App.4th at pp. 939-940.) “Our review of the summary judgment motion requires that we apply the same three-step process required of the trial court. [Citation.] “First, we identify the issues framed by the pleadings since it is these allegations to which the motion must respond by establishing a complete defense or otherwise showing there is no factual basis for relief on any theory reasonably contemplated by the opponent’s pleading. [Citations.] [¶] Secondly, we determine whether the moving party’s showing has established facts which negate the opponent’s claim and justify a judgment in movant’s favor. [Citations.] . . . [¶] . . . [T]he third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue. [Citation.]” [Citation.]’ [Citation.]” (*Eriksson, supra*, 191 Cal.App.4th at p. 848.)

“In reviewing the evidence, we strictly construe the moving party’s evidence and liberally construe the opposing party’s and accept as undisputed only those portions of the moving party’s evidence that are uncontradicted.’ [Citation.] ‘Only when the inferences are indisputable may the court decide the issues as a matter of law. If the evidence is in conflict, the factual issues must be resolved by trial. “Any doubts about the propriety of summary judgment . . . are generally resolved *against* granting the motion, because that allows the future development of the case and avoids errors.” [Citation.]” (*Scalf v. D.B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519, original italics.)

““In construing trust instruments, as in the construction and interpretation of all documents, the duty of the court is to first ascertain and then, if possible, give effect to the intent of the maker.” [Citations.]’ [Citation.]” (*Estate of Cairns* (2010) 188 Cal.App.4th 937, 944.) “The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument.” (§ 21102, subd. (a).) ““In construing a trust instrument, the intent of the trustor prevails and it

must be ascertained from the whole of the trust instrument, not just separate parts of it.” [Citations.]’ [Citation.]” (*Estate of Cairns*, at p. 944; § 21120 [“The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative”]; § 21121 [“All parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole”].)

“The interpretation of a trust instrument, like any written document, is a question of law. [Citations.] Under applicable rules of interpretation of written instruments, where there is no conflicting evidence, the reviewing court must independently interpret the document.’ [Citations.]” (*Estate of Cairns, supra*, 188 Cal.App.4th at p. 944.) When there is no conflicting extrinsic evidence concerning the settlor’s intent, “we must ‘review the trust de novo, considering the circumstances under which the document was made in order to place ourselves in the position of the trustor to interpret the document.’ [Citation.]” (*Ibid.*) Here, the parties did not offer any conflicting extrinsic evidence on Carmen’s intent in making the 2004 Trust, the 2011 Trust, or the 2011 Will.

B. *Luquin Failed to Meet Her Initial Burden to Show the 2011 Trust Did Not Revoke or Amend the 2004 Trust*

Luquin’s summary judgment motion argued the 2011 Trust did not revoke or amend the 2004 Trust for three reasons. Each of these reasons, however, fails to meet Luquin’s initial burden on summary judgment because each either fails to address Mendoza’s revocation and amendment allegations in her petition or fails to establish Luquin’s right to judgment as a matter of law.

First, Luquin contends the 2011 Trust did not revoke or amend the 2004 Trust because it did not refer to the 2004 Trust or otherwise expressly declare an intent to revoke or amend the 2004 Trust. The Probate Code provides a revocable trust may be partially or completely revoked (1) in any manner provided in the trust

instrument, or (2) by a writing, other than a will, signed by the trustor and delivered to the trustee unless the revocation method provided in the trust instrument is explicitly exclusive. (§ 15401, subd. (a)(1) & (2); *King v. Lynch* (2012) 204 Cal.App.4th 1186, 1190.) The Probate Code also provides a revocable trust may be amended through the procedures for revocation unless the trust instrument provides otherwise. (§ 15402; *King*, at p. 1190.)

As its settlor, the 2004 Trust authorized Carmen to revoke or amend the trust or any part thereof by delivering a signed writing to the trustee making the desired revocation or amendment.⁶ The 2004 Trust did not limit or qualify the writing Carmen could use, nor did it require Carmen to expressly revoke or amend the 2004 Trust. Consequently, Carmen could revoke or amend the 2004 Trust through “any writing that unambiguously manifested her intent to revoke [or amend]” the trust, including a will or another trust.⁷ (*Gardenhire, supra*, 127 Cal.App.4th at pp. 888, 891, original italics [trust authorizing settlor to revoke or amend trust through “written notice” to trustee “reasonably implies that [settlor] did not intend to restrict the form of written notice or the nature of the documents used to provide it [and] any writing[, including a will,] that unambiguously manifested [the settlor’s] intent would do”].)

⁶ The 2004 Trust further provided, “Promptly on receipt of the revocation notice, the trustee shall deliver the revoked portion of the trust assets to the settlor or to an individual designated in the notice.” Mendoza contends Carmen as the trustee of the 2004 Trust never delivered “the revoked portion of the trust assets” to herself as the 2004 Trust’s settlor, and therefore there was no valid revocation. We reject this contention because delivering “the revoked portion of the trust assets” to the settlor was a task to be performed by the trustee after the revocation occurred; it was not a precondition to a valid revocation and did not affect whether the settlor properly delivered the writing to the trustee.

⁷ There is no dispute Carmen delivered the 2011 Trust (and 2011 Will) to the trustee of the 2004 Trust because Carmen was the trustee of the 2004 Trust when she executed the 2011 Trust and 2011 Will. (*Gardenhire v. Superior Court* (2005) 127 Cal.App.4th 882, 888, 891 (*Gardenhire*).)

Mendoza's petition acknowledged the 2011 Trust did not refer to or expressly purport to revoke or amend the 2004 Trust. Nonetheless, the petition alleged the 2011 Trust revoked or amended the 2004 Trust because it declared Carmen's intent to fund the 2011 Trust with the Beverly and Cedar Properties she previously had transferred to the 2004 Trust and directed distributions of trust assets inconsistent with the directed distributions in the 2004 Trust.

The face of the 2011 Trust supports these allegations. Specifically, the 2011 Trust stated Carmen "hereby transfers" to the 2011 Trust all "assets listed in Attachment A," which listed only the Beverly and Cedar Properties. The 2011 Trust also instructs the trustee to distribute upon Carmen's death all trust assets equally among Carmen's adult children, except Luquin. The 2011 Trust explains Carmen "specifically decided to exclude FANNY LUQUIN as a beneficiary under this revocable trust based on the fact that [a] distribution of assets in prior years ha[s] been provided to her."⁸ The 2011 Will echoes this intent by stating Carmen "generally and specifically disinherit[s]" Luquin and "intentionally omitted" her from all gifts and bequests made in the 2011 Will and 2011 Trust. This distribution of trust assets contradicts the structured distributions of the 2004 Trust, which distributed all trust assets equally among all of Carmen's adult children, including Luquin.

Luquin's summary judgment motion fails to address the allegation that Carmen's creation of inconsistent provisions in a later trust or will manifested an intent to revoke or amend the earlier trust. Luquin failed to meet her initial burden on summary judgment because she failed to address or reconcile conflicts between the two trusts. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 115 ["A defendant that moves for

⁸ Luquin concedes Carmen gave her approximately \$52,000 in 2008 to use in purchasing a home.

summary judgment has the burden to show that it is entitled to judgment with respect to *all theories* of liability asserted by the plaintiff’ (italics added)].)

Luquin next argues the 2011 Trust did not validly transfer the Beverly and Cedar Properties to the 2011 Trust, and therefore title to those properties remained in the name of the trustee for the 2004 Trust. This argument also fails because it fails to address Mendoza’s specific allegation that the 2011 Trust revoked or amended the 2004 Trust by declaring Carmen’s intent to fund the 2011 Trust with the Beverly and Cedar Properties, and by directing distributions inconsistent with the 2004 Trust. Luquin’s argument is irrelevant because Mendoza did not allege the 2011 Trust actually transferred the Beverly and Cedar Properties to the 2011 Trust. Instead, she alleged the 2011 Will’s pourover provision made the Beverly and Cedar Properties part of the 2011 Trust upon Carmen’s death because those properties became part of Carmen’s residual estate once the 2011 Trust revoked or amended the 2004 Trust.

An instrument that purports to be a will or trust may validly revoke or amend an earlier will or trust even if the instrument fails to meet the technical requirements for an enforceable will or trust. (*In re Estate of Stoker* (2011) 193 Cal.App.4th 236, 243 [instrument purporting to be a will that could not be admitted to probate because it failed to meet the technical requirements for a valid will nonetheless revoked an earlier will and trust by clearly manifesting the maker’s intent to do so].) As explained above, the 2004 Trust merely required a signed writing delivered to the trustee that unambiguously manifested Carmen’s intent to revoke or amend the 2004 Trust; it did not require Carmen to transfer the assets held in the 2004 Trust. Luquin failed to show the 2011 Trust did not manifest Carmen’s intent to revoke or amend the 2004 Trust, and therefore Luquin failed to meet her initial burden on summary judgment.

Finally, Luquin contends Carmen did not intend to revoke or amend the 2004 Trust because she did not inform the attorney who drafted the 2011 Trust and Will about the 2004 Trust or that the trustee of the 2004 Trust held title to the Beverly and

Cedar Properties. We reject this contention because Carmen's failure to tell the attorney about the 2004 Trust and the title to the Beverly and Cedar Properties does not show why she failed to share that information with the attorney.

Although her failure to share this information with the attorney could show she did not intend to revoke or amend the 2004 Trust, it is equally plausible she did not share the information because she assumed the 2011 Trust's inconsistent terms and distributions necessarily would revoke or amend the 2004 Trust. Accordingly, Carmen's failure to share this information creates rather than negates a triable issue of fact. (See *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 881 [summary judgment must be denied when evidence supports conflicting inferences].)

We therefore reverse the trial court's order granting Luquin's summary judgment motion. In doing so, we do not decide whether the 2011 Trust actually revoked or amended the 2004 Trust. We merely conclude Luquin failed to meet her initial burden because she did not address the specific revocation and amendment theory Mendoza alleged in her petition. We also do not decide any other issues raised in the parties' pleadings but not addressed in the summary judgment motion, including whether Carmen was subject to undue influence when she executed the 2011 Trust and 2011 Will, whether Carmen lacked capacity when she executed those instruments, and whether Carmen properly funded the 2011 Trust.

III
DISPOSITION

The order is reversed. Mendoza shall recover her costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.