

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SUSAN GREENBERG,

Plaintiff and Appellant,

v.

GARY QUAINANCE, as Trustee, etc.,

Defendant and Respondent.

G049733

(Super. Ct. No. 30-2013-00670640)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Randall J. Sherman, Judge. Reversed and remanded.

Charles K. Mills for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

* * *

This is an appeal from the probate court's dismissal of petitioner Susan Greenberg's petition for an accounting and to remove respondent Gary Quaintance as

trustee of the subject trust. The petition was served on Quaintance, a resident of Oregon, while he was physically present in California. The court granted Quaintance's motion to quash for lack of jurisdiction. Plaintiff, in an uncontested appeal, argues this was error. We agree, concluding the court erroneously ruled that jurisdiction over matters involving a trust was governed by in rem, rather than in personam, jurisdiction. Accordingly, we reverse and remand.

I FACTS

In 1977, settlors Eugene and Sue Clark¹ created the subject trust. It went through a number of modifications. The operative trust is the third amendment to the trust, executed in August 2000. Eugene died in March 2001. Under its terms, upon Eugene's passing, the trust was divided into three separate trusts, known as A, B, and C. In 2011, Sue appointed Quaintance as the trustee of both the A and B trusts. Sue died in 2013. The instant petition concerns the B trust (the trust) only. Prior to Quaintance's appointment as trustee, the trust was administered in California, where the Clarks resided, and all trust property was based in California.

On August 22, 2013, Greenberg, one of the beneficiaries of the trust, filed a petition to remove Quaintance as trustee and for an accounting. She also sought appointment of herself and Michael Clark, another beneficiary, as successor trustees. The petition listed Quaintance's current address as Salem, Oregon. The petition stated: "The current acting trustee is a resident of the State of Oregon. Nonetheless, jurisdiction and venue regarding this trust is appropriate in Orange County, California. [¶] When

¹ Throughout this opinion, after their full names are first mentioned, we subsequently refer to members of the Clark family by their first names. This is done for the ease of the reader because those involved share a last name. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

Gary Quaintance took trusteeship, the settlor of the trust lived [in San Juan Capistrano]. By accepting trusteeship of a trust having its principal place of administration in the State of California, Mr. Quaintance submitted personally to the jurisdiction of the California Superior Court, County of Orange” The hearing on the petition was set for November 5, and notice was mailed to Quaintance and the beneficiaries of the trust.

On October 15, Quaintance filed a motion to quash service, alleging he is not a resident of California and the trust’s principal place of administration is in Oregon. The hearing on Quaintance’s motion was set for November 22, and accordingly, the November 5 hearing date on the petition was continued until January. At the November 22 hearing, the court continued the motion to allow Greenberg a chance to amend her petition.

Greenberg’s counsel learned that Quaintance would be visiting California for Thanksgiving. Counsel prepared a notice of the January hearing date on the petition and served it upon Quaintance while he was visiting California. Service was complete on November 29.

At the continued hearing on the motion to quash, the court concluded Quaintance was properly served. The trial court, however, found that was not the end of the inquiry, granted the motion to quash, and dismissed the petition. The court ruled trusts were governed by principles of in rem, rather than in personam, jurisdiction, and Quaintance’s appointment as trustee meant the principal place of business moved from California to Oregon. Greenberg’s subsequent motion to set aside the court’s order was denied, but the court did amend its order to treat the motion to quash as a demurrer on the grounds of lack of jurisdiction. Greenberg now appeals.

II DISCUSSION

Standard of Review

Whether viewed as a motion to quash the summons or as a demurrer, this case calls for us to apply the law to essentially undisputed facts. Accordingly, our review is de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052.)

Statutory Framework

“In proceedings commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court.” (Prob. Code, § 17001.)² A trust’s principal place of administration is “the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.” (§ 17002, subd. (a).)

Sections 17003 and 17004 discuss jurisdiction over trusts. Section 17003, subdivision (a) states: “By accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under this division.” Section 17004 provides: “The court may exercise jurisdiction in proceedings under this division on any basis permitted by Section 410.10 of the Code of Civil Procedure.”

The most recent Law Revision Commission Comments to section 17004 states: “Section 17004 recognizes that the court, in proceedings relating to internal trust affairs or other purposes described in Section 17000, may exercise jurisdiction on any basis that is not inconsistent with the California or United States Constitutions, as provided in Code of Civil Procedure Section 410.10. . . . In addition, Section 17003

² Subsequent statutory references are to the Probate Code unless otherwise indicated.

codifies a basis of personal jurisdiction derived from concepts of presence in the state and consent to jurisdiction. However, *personal jurisdiction over a trustee may be exercised where the trustee is found, regardless of the location of the trust property.*” (Cal. Law Revision Com. com., 54A pt.1 West’s Ann. Prob. Code (2011 ed.) foll. § 17004, pp. 306-307, italics added.)

Code of Civil Procedure 410.10, often called California’s long-arm statute, states: “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” In *Burnham v. Superior Court* (1990) 495 U.S. 604, the United States Supreme Court rejected a defendant’s argument that service during physical presence in the state was insufficient to establish jurisdiction. Prior case law did not offer “support for the very different proposition petitioner seeks to establish today: that a defendant’s presence in the forum is not only unnecessary to validate novel, nontraditional assertions of jurisdiction, but is itself no longer sufficient to establish jurisdiction. That proposition is unfaithful to both elementary logic and the foundations of our due process jurisprudence.” (*Id.* at p. 619.) “The short of the matter is that jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of ‘traditional notions of fair play and substantial justice.’ That standard was developed by *analogy* to ‘physical presence,’ and it would be perverse to say it could now be turned against that touchstone of jurisdiction.” (*Ibid.*)

Jurisdiction in California

The court, in granting the motion to quash, ruled that “jurisdiction in matters involving the internal affairs of a trust is governed by principles of in rem jurisdiction, not in personam jurisdiction.” The court did not provide a citation for this statement, and we must disagree. “[I]t is a bedrock principle that an in rem action requires that the court have actual or constructive possession of the subject of the suit (the

res) in order to proceed with the cause.” (*People v. \$25,000 United States Currency* (2005) 131 Cal.App.4th 127, 132.)

The Probate Code, however, makes no mention of the court having possession of the res in order to exercise jurisdiction. Instead, it provides for jurisdiction on any basis that is not inconsistent with the California or United States Constitutions, as provided in Code of Civil Procedure Section 410.10. (§ 17004.) A rule requiring trust cases to be treated as in rem, rather than in personam, for purposes of jurisdiction, would be in clear conflict with the statute.

Thus, the question is whether the trial court had in personam jurisdiction over the trustee, and it very obviously did. *Estate of Knox* (1942) 52 Cal.App.2d 338, makes it clear that personal service on the trustee is sufficient to create jurisdiction. “‘The courts of the state in which the trustee may be reached by process will, in the absence of factors necessitating the application of the doctrine of *forum nonconveniens*, assume jurisdiction of an action by the beneficiary of a trust under the will of a resident of another state, to recover the trust property or to compel the execution of the trust or for an accounting.’ [Citation.]” (*Id.* at p. 348; see also 3 Gold et al., Cal. Civil Practice: Probate & Trust Proceedings (2005) § 24:11, p. 24-20 [“[P]ersonal jurisdiction over a trustee may be exercised where the trustee is found, regardless of the location of the trust property”].)

Given the trustee’s physical presence in California when he was served, any other argument regarding personal jurisdiction is unavailing. Even if we assume the trust’s principal place of business is in Oregon, and even if the trustee does not otherwise have minimum contacts with California, jurisdiction based on service alone is completely proper. (See *Burnham v. Superior Court*, *supra*, 495 U.S. at p. 619; *Estate of Knox*, *supra*, 52 Cal.App.2d at p. 348.)

Accordingly, the court is reversed. Greenberg’s petition may proceed in California.

III
DISPOSITION

The judgment is reversed. The case is remanded to the probate court for further proceedings. Greenberg is entitled to her costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.