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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor, etc.,
et al.,

Petitioners and Respondents,

v.

MICHAEL A. WEISS, Individually and as
Executor etc.,

Claimants and Appellants.

G052208

(Super. Ct. No. 30-2009-00331535)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, David L.
Belz, Judge. Order affirmed.

Michael A. Weiss, in pro. per.; Law Office of Michael A. Weiss and
Michael A. Weiss for Claimants and Appellants.

Law Offices of Steven M. Magro and Steven M. Magro for Petitioners and
Respondents.

Michael A. Weiss,¹ appearing individually and as the executor for the Estate of Jane L. Marsh, deceased (collectively appellants), appeal from an order confirming the sale of real property by the Estate of Monroe F. Marsh, deceased. (Prob. Code, § 1300, subd. (a).)² Stephen D. Marsh and Damon Marsh, executors of the estate (collectively respondents) have filed a motion to dismiss the appeal and a request for judicial notice in connection with the motion. Respondents contend the sale of the property during the pendency of this appeal renders it moot.

We conclude the mere fact respondents obtained relief from the stay imposed by section 1310, subdivision (a) while the appeal was pending and then completed the sale does not constitute a basis for dismissal of the appeal. Thus, we reject respondents' reliance on the mootness doctrine to dismiss this appeal. However, we also conclude respondents' argument that appellants lack standing to challenge the order confirming the sale has merit. Thus, we affirm the order confirming the sale of the estate's real property.

FACTS

The historical background of this case is set forth at length in our companion opinion (*Estate of Monroe F. Marsh* (Nov. 7, 2016, G052082 [nonpub. opn.]). Suffice it to say that at the time of his death in 2009 Monroe owned a residence in Irvine, California as his separate property. His will left all of his property to Stephen and Stephen's family, subject to Jane's right to occupy the Irvine residence for the remainder of her life. In addition, it authorized his executors "to sell any and all interests owned by me in real property as soon as reasonably possible in their discretion."

¹ For clarity we refer to the individual parties by their first names. No disrespect is intended.

² Unless otherwise indicated, all further statutory references are to the Probate Code.

After Monroe died, appellants embarked on a long, arduous, but unsuccessful campaign of litigation whereby Jane, with Michael's assistance, claimed she was entitled to all of Monroe's assets. In part, Jane asserted she acquired the Irvine residence by discharging the indebtedness Monroe incurred on a reverse mortgage secured by the property. That theory failed as well, and the probate court ultimately held appellants' actions resulted in a forfeiture of Jane's rights under the will. In any event, by the time respondents petitioned to confirm the residence's sale, Jane had died.

In May 2015, respondents filed a report of sale and petition for an order confirming the sale of the Irvine residence to Peggy Pei-Yi Lin and Yi-Ming Su for an all-cash price of \$982,000. Respondents served notice of the hearing on appellants.

The trial court conducted a hearing on the petition. Michael³ appeared and sought to file objections to the sale, but the trial court rejected them finding he had no standing to challenge the sale. He then made an offer to purchase the property for \$1,031,600. The bid included a claim for a credit of \$640,000 based on Jane's pay off of Monroe's reverse mortgage. The trial court rejected Michael's offer, finding it was not a qualified bid. It then approved the sale of the property and entered an order confirming the sale to Peggy Pei-Yi Lin and Yi-Ming Su for \$982,000.

Appellants filed their notice of appeal from the order on July 2. The notice triggered a stay of the sale while the appeal was pending. (§ 1310, subd. (a).) Respondents filed an ex parte petition seeking relief from the stay, which the trial court granted. (§ 1310, subd. (b).) Sale of the property was completed in August.

³ At the time of the hearing on the petition to confirm the sale, Michael had not yet been appointed as the executor of Jane's estate.

DISCUSSION

1. The Motion to Dismiss the Appeal and Request for Judicial Notice

Respondents have moved to dismiss this appeal and filed a related request for judicial notice. Citing the trial court's order granting relief from the appellate stay and the subsequent sale of the Irvine residence, they contend the appeal is now moot. We disagree.

Section 1300, subdivision (a) allows for an appeal "from the making of" an order "confirming the sale . . . purchase, conveyance, or exchange of property." (*Estate of Cahoon* (1980) 101 Cal.App.3d 434, 437 (*Cahoon*) ["An order confirming a sale of real property is appealable"].) Generally, the filing of a notice of appeal "stays the operation and effect of the judgment or order." (§ 1310, subd. (a).) However, subdivision (b) of section 1310 creates an exception to the stay, allowing a fiduciary "to exercise the powers, from time to time, as if no appeal were pending" "for the purpose of preventing injury or loss to a person or property." In addition, subdivision (b) provides, "[a]ll acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal."

Thus, an interested person can appeal from an order confirming the sale of a decedent's property. (§ 1300, subd. (a); *Estate of Martin* (1999) 72 Cal.App.4th 1438, 1442-1443 [statute allows appeal from order denying request to void sale].) But in cases such as this one, involving the sale of a decedent's residence, it is unlikely a prospective buyer would be willing to await the outcome of an appeal before completing the proposed purchase. Consequently, subdivision (b) of section 1310 allows an estate's representative to obtain judicial authorization to proceed with the sale during the pendency of an appeal without the threat of incurring any personal liability for his or her actions.

However, if subdivision (b) of section 1310 is interpreted as a basis for the representative to have an appeal dismissed on the ground of mootness, there are many cases where the merits of the trial court's ruling will escape appellate review. That is

particularly true where, as here, the appellants are asserting the order confirming the sale is void for lack of jurisdiction. Additionally, such an interpretation of section 1310, subdivision (b) would render the provision absolving the estate's representative of personal liability regardless of the appeal's outcome mere surplusage. We conclude that although respondents sold the Irvine residence, that is not a basis for dismissing the current appeal.

2. *Appellants' Standing to Appeal*

On the merits, we initially confront respondents' contention appellants lack standing to challenge the order confirming the Irvine residence's sale. We conclude this argument has merit.

Only a "party aggrieved" has standing to maintain an appeal. (Code Civ. Proc., § 902.) "This rule applies to appeals from probate court orders." (*Estate of Bartsch* (2011) 193 Cal.App.4th 885, 890 (*Bartsch*); § 1000 ["Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions . . . apply to, and constitute the rules of practice in, proceedings under this code"].) Further, "[s]tanding to appeal is "jurisdictional and therefore cannot be waived." [Citation.]' [Citation.]" (*Bartsch, supra*, 193 Cal.App.4th at p. 890; *Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 292.)

Generally, "[o]ne is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment. [Citations.] Appellant's interest "must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." (County of Alameda v. Carleson (1971) 5 Cal.3d 730, 737.) In probate matters, to have appellate standing, a party must "hav[e] an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment" (*Estate of Colton* (1912) 164 Cal. 1, 5.)

Appellants fail to demonstrate their standing to challenge the order confirming the sale of the Irvine residence. Prior litigation in this estate proceeding

established that when Monroe married Jane, he owned the residence as his separate property. During the marriage Monroe kept his property, including the Irvine residence, in his own name and separate from the couple's community assets. Thus, Jane never acquired an interest in the residence during the marriage. Further, by unsuccessfully challenging Monroe's estate plan after he died, Jane lost her life estate in the use and occupancy of the residence. Michael's claim to an interest in the Irvine residence was through his mother's attempt to transfer title of it to him after she paid off the reverse mortgage. Since the probate court decreed invalid Jane's assertion she acquired the residence by paying off the reverse mortgage, Michael's purported ownership interest in the property also failed.

Consequently, as of the date respondents sought confirmation of the sale to Peggy Pei-Yi Lin and Yi-Ming Su for an all-cash price of \$982,000, appellants lacked any interest in Monroe's estate, including the Irvine residence.

The only other basis that might allow Michael standing to challenge the order confirming the sale would be his unsuccessful bid to acquire the property. However, this theory is unavailing as well.

In *Cahoon, supra*, 101 Cal.App.3d 434, a party who was an unsuccessful bidder at the sale of an estate's real property, moved to vacate the transaction. He complained that after the court confirmed a sale to the successful bidder, the estate and the buyer changed the purchase terms in ways which would have justified him in making a higher bid. (*Id.* at p. 437.) The motion to vacate was denied. (*Ibid.*)

The Court of Appeal affirmed the order denying the motion to vacate the sale, finding the appellant was not an aggrieved party. "On the day of his first appearance in the action . . . when he filed an increased bid in the confirmation hearing and was outbid, appellant had, at best, a *prospective* interest in the subject sale. Upon being outbid, his interest in the proceedings terminated. [¶] . . . [¶] We believe that no California case authority stands for the proposition, asserted by appellant, that an

unsuccessful bidder at probate sale has standing to appeal an order confirming sale of estate property, as an ‘aggrieved party,’ merely by virtue of having participated as an unsuccessful bidder at the confirmation hearing.” (*Cahoon, supra*, 101 Cal.App.3d at pp. 437-438; *In re Pacific Std. Life Ins. Co.* (1992) 9 Cal.App.4th 1197, 1200-1201.)

The same conclusion applies here. Respondents received an all-cash bid of \$982,000 for the Irvine residence, an amount that significantly exceeded the most recent appraised value of the property (\$855,000). While the amount of Michael’s bid surpassed the all-cash offer, it was conditioned on respondents crediting him with \$640,000 for the pay off on the reverse mortgage. The trial court found his proposal unqualified. Thus, Michael’s prospective interest in the Irvine residence was extinguished upon the rejection of his bid.

As in *Cahoon, supra*, 101 Cal.App.3d 434, we conclude the appropriate result is to affirm the order confirming the sale.

DISPOSITION

The motion to dismiss the appeal and request for judicial notice are denied. The order confirming the sale of the estate’s Irvine residence is affirmed. Respondents shall recover their costs on appeal.

O’LEARY, P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.