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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

ROBERT LARA, as Trustee, etc.,

Plaintiff and Respondent,

v.

JUDITH ANNE LARA,

Defendant and Appellant.

H039557

(Santa Clara County
Super. Ct. No. 112PR170722)

JUDITH ANNE LARA,

Plaintiff and Appellant,

v.

ROBERT LARA, as Trustee, etc.,

Defendant and Respondent.

H039557

(Santa Clara County
Super. Ct. No. 112CV237917)

I. INTRODUCTION

Judith Anne Lara, one of the beneficiaries of a trust established by her husband, decedent Ruben Michael Lara, appeals from a probate court order granting instructions to trustee Robert Lara, the decedent's son from a prior marriage.¹ Judith contends that the

¹ For ease of reference and meaning no disrespect, we will refer to Judith Anne Lara, Ruben Michael Lara, and Robert Lara by their first names.

probate court did not have jurisdiction to issue the order because the probate action, which was initiated by an earlier petition by Robert, had already been dismissed by the time Robert filed the petition for instructions.

For reasons that we will explain, we will affirm the order.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Robert's First Petition Under Probate Code Section 850

In May 2012, Robert filed a petition under Probate Code section 850² to confirm the existence of the Lara Trust No. D-1, to appoint himself the trustee, and to confirm that certain real property in San Jose was held under the trust. Judith filed a general denial in June 2012.

Robert thereafter filed a request for dismissal on a Judicial Council form. He requested dismissal without prejudice as to the “[e]ntire action of all parties and all causes of action.” The dismissal was entered as requested on July 20, 2012.

B. Robert's Second Petition Under Probate Code Section 17200

In January 2013, Robert filed a petition for instructions under section 17200 to administer the Lara Trust No. D-1. He also sought a determination that any claims by Judith concerning the validity of the trust, or the transfer of property of the trust, were barred by the statute of limitations.

Robert alleged the following in his section 17200 petition. Ruben established the Lara Trust No. D-1 after marrying Judith, and he designated Robert, his son from a previous marriage, as trustee. The trust provides that upon Ruben's death, the trust assets are to be distributed equally to Judith, Robert, and Ruben's daughter. The only asset of the trust is certain real property in San Jose. Ruben died on July 15, 2011. According to Robert's petition, Judith claims that the trust is not valid and that Ruben promised to

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

leave her a 50% interest in the property. Judith's claims allegedly interfere with Robert's ability to administer the trust because he cannot sell the property, maintain the property, or control expenses related to the property such as insurance, mortgage, and property taxes. Robert contended in his petition that Judith's claims were barred by different statutes of limitations.

Robert also filed a motion to consolidate the probate action with a separate civil action that Judith had filed against him as trustee. In her civil complaint, Judith sought a declaration of the parties' interests in the San Jose property under the trust. Judith alleged that she and the decedent owned the property as community property. She claimed that the decedent induced her to place her name on documents and told her that the documents did not change her ownership interest in the property. According to Judith, the trust provided her with only a one-third interest in the property, and thus the decedent had not been truthful to her and had breached a fiduciary duty to her.

In February 2013, Judith filed an objection to Robert's section 17200 petition for instructions. She contended that the probate action had been dismissed on July 20, 2012, based on Robert's request for dismissal, and that as a result, the probate court was without jurisdiction to act further.

C. The Probate Court's Order Regarding Robert's Second Petition

On March 22, 2013, a hearing was held on Robert's section 17200 petition for instructions. Judith's counsel reiterated the objection that the probate court lacked jurisdiction due to the prior dismissal of the action. Robert's counsel argued that there had been "no substantive response" to the petition and instead there had been "one delay tactic after another." According to Robert's counsel, he raised the statute of limitations issue when he first met Judith's counsel, but neither Judith nor her counsel would acknowledge the issue and they would not allow Robert to administer the trust. Regarding the dismissal, Robert's counsel stated that he "did not want this Court to have two different case numbers on the same trust making the administration more difficult for

the Court.” Robert’s counsel suggested to the court that “[i]f there’s some problem, . . . [the court] can modify the dismissal nunc pro tunc to dismiss the petition.” The probate court indicated it was going to grant Robert’s petition on statute of limitations grounds. The court also treated Robert’s motion to consolidate as a request to coordinate the probate action and Judith’s separate action, and indicated that it was going to grant the motion.

In a written order filed March 22, 2013, the probate court ordered that Robert may administer the trust and take such actions as necessary concerning the real property in the trust. The court also determined that “any claims Judith Anne Lara has concerning the validity of the Trust or the transfer to the Trust of the real property located [in] . . . San Jose, . . . whether brought against [Robert], the decedent or the Trust, are barred by Code of Civil Procedure § 366.3 and Probate Code § 16061.8.” By separate written order, the court ordered the probate action “coordinat[ed]” with Judith’s civil action.

D. Judith’s Notice of Appeal

On April 19, 2013, Judith filed a notice of appeal from the March 22, 2013 order on Robert’s section 17200 petition for instructions.³

In the meantime, Robert filed a motion to expunge a lis pendens that Judith had recorded on the San Jose property. The probate court granted the motion after determining that Judith could not establish the probable validity of her real property claim. The court later ordered Judith to pay Robert attorney’s fees and costs.

While Robert’s motion for attorney’s fees and costs was pending, Judith filed an amended civil complaint for declaratory relief against Robert as trustee of the trust. She continued to allege that the decedent had not been truthful to her about the documents

³ The March 22, 2013 order on petition for instructions is an appealable order. (§ 1304, subd. (a); *Germino v. Hillyer* (2003) 107 Cal.App.4th 951, 953 [order granting instructions to cotrustees is appealable].)

that had changed her ownership interest in the San Jose property, and she continued to seek a declaration of the parties' interests in the San Jose property under the trust. The court ultimately concluded that Judith's declaratory relief action was time-barred and on that basis granted a motion for summary judgment by Robert.

III. DISCUSSION

Judith contends that the probate court did not have jurisdiction to issue the March 22, 2013 order on Robert's second petition, which was filed in January 2013, because his prior "voluntary request for dismissal and [the] dismissal filed and entered by the Clerk of the Court on July 20, 2012 terminated case number 1-12-PR-170722." (Capitalization omitted.)

In response, Robert contends that that the probate court properly granted his section 17200 petition for instructions. Robert argues that Code of Civil Procedure section 581 regarding dismissals "do[es] not necessarily apply to trust administration proceedings." He contends that multiple petitions may be filed within a single trust administration proceeding, and thus the probate court has jurisdiction to hear a subsequent petition after a prior petition has been voluntarily dismissed. Further, the first petition was dismissed without prejudice to Robert refileing it. According to Robert, judicial economy dictates that all matters involving a trust be filed within the same case, and separately filed cases would have been consolidated pursuant to local court rules. To the extent the probate court could not consider his second petition due to the prior dismissal of the action, Robert contends that the court had the discretion to order that the prior dismissal was as to the first "[p]etition only and not the entire trust administration proceeding through a nunc pro tunc order." (Italics omitted.) Alternatively, Robert contends the court had the discretion to treat the second petition as including a motion to vacate or modify the earlier dismissal. Lastly, with respect to the substance of his section 17200 petition, Robert contends that any claim Judith has concerning the validity

of the trust or the transfer of property of the trust is barred by three different statutes of limitations.

Code of Civil Procedure section 581 provides that an action may be dismissed “without prejudice, upon written request of the plaintiff to the clerk” (*Id.*, subd. (b)(1).) The plaintiff may dismiss the entire complaint, a cause of action asserted in it, or as to any defendant. (*Id.*, subd. (c).) We will assume that Code of Civil Procedure section 581 applies to the instant probate action. (See *Estate of Neilson* (1962) 57 Cal.2d 733, 747 [discussing former section 1233 and concluding that former Code of Civil Procedure section 581 applies to probate proceedings].)

Upon the dismissal of the action, “a trial court . . . thereafter lack[s] jurisdiction to enter further orders in the dismissed action.” (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 784 (*Wells*); accord, *Harris v. Billings* (1993) 16 Cal.App.4th 1396, 1405 (*Harris*).) At the same time, “[a] dismissal ‘without prejudice’ necessarily means without prejudice to the filing of a new action on the same allegations” (*Eaton Hydraulics Inc. v. Continental Casualty Co.* (2005) 132 Cal.App.4th 966, 974, fn. 6 (*Eaton Hydraulics*); accord, *Wells, supra*, at p. 784.)

In this case, Robert initiated probate proceedings by filing his first petition under section 850.⁴ In July 2012, a dismissal of the entire action was entered upon Robert’s

⁴ Section 850 provides in part: “(a) The following persons may file a petition requesting that the court make an order under this part: [¶] . . . [¶] (2) The personal representative or any interested person in any of the following cases: [¶] (A) Where the decedent while living is bound by a contract in writing to convey real property or to transfer personal property and dies before making the conveyance or transfer and the decedent, if living, could have been compelled to make the conveyance or transfer. [¶] (B) Where the decedent while living binds himself or herself or his or her personal representative by a contract in writing to convey real property or to transfer personal property upon or after his or her death and the contract is one which can be specifically enforced. [¶] (C) Where the decedent died in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to (continued)

request. The probate court thereafter lacked jurisdiction to enter further orders in that action. (*Wells, supra*, 29 Cal.3d at p. 784; *Harris, supra*, 16 Cal.App.4th at p. 1405.) We do not believe, however, that the court was without jurisdiction to render a ruling on Robert’s subsequently filed petition under section 17200 for the following reasons.

“The probate court has general power and duty to supervise the administration of trusts. Proceedings in the probate court ‘concerning the internal affairs of the trust’ are *commenced* with the filing of a petition. (§§ 17201, 17200, subd. (a))” (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427, italics added (*Schwartz*)). “[T]he probate court has wide, express powers to ‘make any orders and take any other action necessary or proper to dispose of the matters presented’ by the section 17200 petition. (§ 17206.)” (*Ibid.*) Further, “the probate court has the ‘inherent power to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust.’ [Citation.]” (*Ibid.*, italics omitted.)

In this case, because the dismissal of the action involving the first petition under section 850 was without prejudice, Robert could have initiated a new action on the same allegations. (See *Wells, supra*, 29 Cal.3d at p. 784; *Eaton Hydraulics, supra*, 132 Cal.App.4th at p. 974, fn. 6.) Instead, he commenced a new probate proceeding by filing a new petition under section 17200 (§ 17201; *Schwartz, supra*, 164 Cal.App.4th at p. 427), albeit under the same case number as the first petition under section 850. Robert apparently believed that, because the second petition involved the same trust as the first

another. [¶] (D) Where the decedent died having a claim to real or personal property, title to or possession of which is held by another. [¶] (3) The trustee or any interested person in any of the following cases: [¶] (A) Where the trustee is in possession of, or holds title to, real or personal property, and the property, or some interest, is claimed to belong to another. [¶] (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another. [¶] (C) Where the property of the trust is claimed to be subject to a creditor of the settlor of the trust. [¶] (b) The petition shall set forth facts upon which the claim is based.”

petition, and for ease of administration of the trust by the court, the same case number should be used. (See *Stephens v. Superior Court* (2002) 96 Cal.App.4th 54, 61 [trust administration cases may be “of indefinite duration and potentially include multiple, distinct proceedings involving unrelated evidentiary hearings, contested fact determinations and trials of causes involving different issues and even different parties”]; Super. Ct. Santa Clara County, Local Probate Rules, rule 1(E) [“Whenever it appears that two or more petitions with different case numbers have been filed with reference to the same decedent . . . or trustee, the Court will consolidate all of the matters with the matter bearing the lowest number”].) Judith fails to provide any legal authority for the proposition that the court lacked jurisdiction to enter an order concerning Robert’s subsequent petition under section 17200 solely because that petition used the same case number as the prior petition in the dismissed action.

We further observe that Judith did not contest the underlying merits of the section 17200 petition in the probate court. She also does not contest on appeal the probate court’s ruling that any claim she has concerning the validity of the trust or the transfer to the trust of the San Jose real property is time-barred. Under these circumstances, reversal of the court’s order, as requested by Judith, would potentially result in Robert filing the section 17200 petition again, but with a new case number, followed by briefing from the parties, another hearing, and the same ruling by the probate court. This result would not foster the speedy administration of the trust by the court. (See *In re Estate of Matthiessen* (1935) 10 Cal.App.2d 323, 327.)

In her reply brief, Judith argues for the first time that Robert’s request for dismissal “was purposefully designed and timed to avoid responding to extant discovery and to prevent a judicial adjudication of the validity of the proposed trust by the Court.” Appellate courts ordinarily will not consider new issues that are raised for the first time in the appellant’s reply brief as the respondent has no opportunity to counter such contentions. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764-765.) However, we

will briefly note that Judith fails to articulate the relevance of the discovery to the issues raised in Robert's section 17200 petition for instructions, particularly with respect to the issue of whether her claim concerning the validity of the trust is time-barred.

In sum, as a probate proceeding may be commenced by the filing of a section 17200 petition and the probate court had the authority to entertain a new petition by Robert under section 17200 (§ 17201; *Schwartz, supra*, 164 Cal.App.4th at p. 427), and in the absence of any legal authority cited by Judith concerning the assignment of case numbers, we determine that Robert's and the court's use of the same case number as the earlier petition in the dismissed action did not operate to deprive the court of jurisdiction over the subsequent section 17200 petition.

IV. DISPOSITION

The March 22, 2013 order on petition for instructions is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.