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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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| MICHAEL C. JONES,<br>Plaintiff and Appellant,<br><br>v.<br>LINDA WILLIAMS,<br>Defendant and Respondent. | A156687<br>(Alameda County Super.<br>Ct. No. RP17874145) |
| MICHAEL C. JONES,<br>Plaintiff and Cross-respondent,<br><br>v.<br>LINDA WILLIAMS,<br>Defendant and Cross-appellant. | A156891<br>(Alameda County Super.<br>Ct. No. RP17874145) |

Michael C. Jones petitioned below to challenge a trust created by his deceased mother which designated his sister, respondent Linda Williams, as the trust's successor trustee and sole beneficiary, claiming the trust should be rescinded based on mistake. He argues the trial court erred in excluding certain evidence and in granting Williams' motion for a judgment after Jones' presentation of evidence at trial. Williams cross-appeals that the trial court erred by not dismissing Jones' petition as untimely. We affirm the rulings appealed from and dismiss Williams' cross-appeal as moot.

## BACKGROUND

Alma C. Turner died in August 2016, leaving behind a trust (trust) for which Williams, Turner's daughter, was designated as the trustee and sole beneficiary upon Turner's death. On September 6, 2017, Jones, Turner's son, filed a verified petition, later amended (petition), contesting the trust. He alleged, among other things, that Turner might have been unfamiliar with the terms of her trust and her will; Williams "was incentivized and had the opportunity to supplant an outcome she desired over [Turner's] intent" regarding the trust; errors and omissions in the trust and will "suggest they were lay-drafted, drafted hastily and in secret and never revisited . . . after their execution"; Turner may not have read or signed the documents herself; Williams had hidden information from Jones; and Williams had exercised undue influence on Turner in order to wrongly take Turner's property from her estate.

In his petition, Jones asserted that Turner was the mother of Jones, Williams and two other children who had predeceased her. Jones further asserted that he first initiated a probate action in which Williams lodged Turner's will and was ordered to produce the trust. On February 14, 2017, Jones received a copy of the trust document, but it lacked a schedule of assets that was referenced in it. He also received a "Notification by Trustee" signed by Williams on February 7, 2017, in which Williams stated she was enclosing a copy of the trust. Jones further asserted that on June 15, 2017, in his probate action, he objected to the trust, which led that court to order Williams to provide Jones with the omitted schedule of assets.

Jones attached as "Exhibit A" to his September 2017 petition a 41-page "Declaration of The Alma M. Turner Trust," made on February 16, 2001, which had no schedule attached to it (Declaration of Trust); and a one-page

"Notification By Trustee" (Notification). Turner signed the Declaration of Trust before a notary on February 16, 2001 and initialed each of its paragraphs. The Notification was signed by Williams and dated February 7, 2017. It states it was being provided under Probate Code section 16061.7 and contains various representations and information. These include that the Alma M. Turner Trust became irrevocable upon her death, that Jones was entitled to a "true and correct" copy of the trust and that a "true and correct copy" of the trust was enclosed.

The Declaration of Trust lists Turner as the trustor and trustee and Williams as the successor trustee. It states in its first paragraph that, "[c]oncurrently with the execution of this Trust, Trustor has conveyed and delivered to Trustee the property described in a Schedule of Trust Assets . . . ." It further provides that upon Turner's death, "Williams shall receive 100 percent (100%) of the trust estate if she is then living," acknowledges "the existence of Michael C. Jones" and states that "he shall receive nothing" from the trust estate. It also states that the trust is irrevocable upon the trustor's death.

The record further indicates that the attorney for Williams, apparently after being ordered by the court in Jones' probate action to provide Jones with the schedule of assets referred to in the Declaration of Trust, sent an email to Jones' attorney on August 10, 2017, that included three documents, all signed by Turner on the same day that she signed the Declaration of Trust, February 16, 2001. These included a notarized "Schedule A" of "The Alma M. Turner Trust," which lists a credit union checking account, a real estate property and an art gallery as having been transferred into the trust estate; an "Inventory of Assets" of the "The Alma M. Turner Trust" that lists the items listed on Schedule A, a U.S. Postal Service account and a life

insurance policy; and a notarized "Assignment of Personal Property," pursuant to which all of Turner's tangible personal property were assigned and transferred to her trust.

Williams sought dismissal of Jones' petition as untimely, but the court ruled that the petition was timely filed. Williams' challenge to the court's ruling is the subject of her cross-appeal.

At trial, with both parties represented by counsel, Jones argued only that the trust should be rescinded on account of mistake. The court denied his request to admit two documents: a worksheet purportedly filled out by Turner in November 2000 indicating her intentions regarding her trust for the firm that was preparing it, and the deposition testimony of the attorney who was responsible for drafting her trust. Jones' challenge to the court's admission of these two documents is the subject of his appeal.

After Jones presented his evidence, Williams moved for a judgment in her favor on the ground that Jones had not met his burden of proving mistake. After hearing argument, the court granted Williams' motion and subsequently issued a judgment in Williams' favor.

Jones filed a timely notice of appeal.

## DISCUSSION

## I.

### *Jones Does Not Show the Court Erred in Excluding Evidence.*

#### A. General Legal Standards

We review the trial court's evidentiary rulings for abuse of discretion. (*Bernard v. City of Oakland*, (2012) 202 Cal.App.4th 1553, 1570.) "[A]buse of discretion requires a showing that the trial court ' "exceeded the bounds of reason." ' " (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 736.) Also, "[i]t is a fundamental principle of appellate procedure that a trial court judgment is

ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*James v. Desta* (2018) 5 Cal.5th 594, 608-609.)

**B. The Court's Exclusion of Turner's Trust Worksheet**

Jones argues the trial court abused its discretion in excluding an eight-page worksheet purportedly filled out by Turner regarding the trust that was to be prepared for her by a firm called "EPICO" (worksheet). Jones argues the worksheet was admissible under Evidence Code section 1261, which excepts from the hearsay rule certain statements offered in an action upon a claim or demand against the estate of a declarant. As Williams argues, Jones has waived this claim by failing to meet his burden as appellant of offering meaningful legal argument or record citations to overcome the presumption that the trial court's ruling was correct.

**1. *The Relevant Proceedings Below***

During the trial, Jones sought to have the worksheet, entitled "Living Trust Information Worksheet," admitted into evidence. The worksheet is a printed form apparently originating from EPICO that lists information requests, has answers written by hand purportedly by Turner in November 2000 to assist in EPICO's preparation of her trust and appears to be stamped "received" on December 28, 2000. Unlike the Declaration of Trust, which lists Williams as the sole beneficiary of the trust, the worksheet lists in handwriting Jones, Williams and three others, apparently grandchildren of Turner's, under the section labeled "Beneficiary Information." Williams' attorney objected to the admission of the worksheet on the ground that it was hearsay, which objection the court sustained.

Subsequently, Jones moved again for the worksheet to be admitted, arguing it was an admissible business record that was relevant to Turner's intent regarding the trust. His counsel argued that, since Abrams, the attorney for EPICO who drafted the trust, was not testifying, Jones could establish the worksheet's admissibility through the testimony of the notary who notarized the documents Turner executed in February 2001 that we have discussed.

The court allowed Jones to call the notary in order to lay a foundation for admission of the worksheet. The notary testified that he acted as a notary for EPICO but was not an EPICO employee and was not paid for his notary services. Instead, he received commissions as a licensed insurance agent for the insurance products, such as annuities, that he sold to EPICO clients. He did not recall meeting Turner. He was familiar with the form of the worksheet and "probably" had seen it previously to determine if he could sell insurance products to Turner. He believed a "received" stamp on the top of the worksheet was affixed by EPICO staff, but he did not recall if EPICO stamped all such worksheets or even if he had seen another such document so stamped. He agreed that the worksheet had been processed by staff at EPICO.

Upon soliciting this testimony, Jones' counsel again moved for admission of the worksheet as a business record. Williams' counsel objected on the ground that there was no evidence the notary was an employee or custodian of records for EPICO (which meant he could not authenticate the worksheet as a business record of EPICO). The trial court agreed and sustained the objection. After the notary further testified that he used the information on documents like the worksheet in his own business as an insurance agent, Jones' counsel moved again for admission of the worksheet,

this time on the theory that it was a business record of the notary's insurance business. The court sustained the objection of Williams' counsel, noting that regardless of whether the worksheet was a business record of the notary's insurance business, there was no evidence it was a qualifying business record of EPICO. Jones' counsel returned to questioning the notary, who said he notarized hundreds of estate planning documents for EPICO, worked exclusively for EPICO as a notary and received information from EPICO that the firm produced in the course of their business, such as the worksheet.

Ultimately, the court thought it was "arguable" that Jones had established the worksheet was a business record of the notary, but concluded that, regardless, the notary "clearly received it from someone else, and there's nobody here from that someone else who can authenticate the document or, frankly, even explain what it really means; and therefore it's hearsay at that level." The court sustained Williams' objection to the worksheet as inadmissible hearsay. It also rejected Jones' final argument that the worksheet was admissible because, other than regarding Turner's intent about her trust beneficiaries, it was not being offered to prove the truth of its contents. The court noted it *was* being offered for the truth regarding Turner's intent.

**2. *Analysis***

As our discussion of the relevant proceedings makes clear, Jones relied entirely below on his contention that the worksheet constituted an admissible business record, an exception to the hearsay rule contained in Evidence Code section 1271.[1] However, on appeal, Jones does not raise this issue or argue

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[1] Evidence Code section 1271 provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

that the trial court improperly rejected his business record argument. Rather, Jones relies for the first time on the exception to the hearsay rule contained in Evidence Code section 1261, which states:

"(a) Evidence of a statement is not made inadmissible by the hearsay rule when offered in an action upon a claim or demand against the estate of the declarant if the statement was made upon the personal knowledge of the declarant at a time when the matter had been recently perceived by him and while his recollection was clear.

"(b) Evidence of a statement is inadmissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness."

After summarizing the debate below regarding whether the worksheet was a *business record* under Evidence Code section 1271, Jones contends that "[t]he court reasoned that the exclusion was proper under the hearsay rule notwithstanding the assertion of the worksheet being a declaration of the decedent's intended beneficiaries triggering the application of Evidence Code section 1261." He provides no citation to the record for this assertion. Without citation to supporting legal authority other than Evidence Code section 1261 itself, from which it is not apparent that the worksheet was

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"(a) The writing was made in the regular course of a business;

"(b) The writing was made at or near the time of the act, condition, or event;

"(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and

"(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

admissible,[2] or to any evidence relevant to the standards that must be met under that statute, Jones argues that the trial court abused its discretion when it ignored a rule of evidence that allowed the admission of the worksheet.

We have the discretion to disregard issues not properly addressed in the briefs and may treat them as having been abandoned or waived. (See, e.g., *People v. Stanley* (1995) 10 Cal.4th 764, 793; *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4.) " 'Appellate briefs must provide argument and legal authority for the positions taken. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." ' [Citation.] 'We are not bound to develop appellants' argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.' " (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

Further, " ' "[i]t is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." ' [Citation.] Because '[t]here is no duty on this court to search the record for evidence' [citation], an appellate court *may* disregard any factual contention not supported by a proper citation to the record." (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [noting that the

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[2] Jones briefly refers to legal authority regarding the abuse of discretion standard (see *In re Automobile Antitrust Cases I & II* (2016) 1 Cal.App.5th 127 and *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281), but these cases provide no support for his assertion that the worksheet was admissible under Evidence Code section 1261.

California Rules of Court require factual assertions to be supported by citations to the record].)

Jones' argument, unadorned by legal authority or citations to the record that support his contentions regarding Evidence Code section 1261, is plainly insufficient to mount an appellate challenge to the trial court's decision to exclude the worksheet on the ground that the court improperly ignored that exception to the hearsay rule. Therefore, he has waived this appellate claim.[3]

**C. The Court's Exclusion of Abrams' Deposition Testimony**

Jones also argues the trial court abused its discretion by excluding a transcript of the deposition testimony given by the attorney responsible for drafting Turner's trust, Christopher J. Abrams. Jones argues Abrams' deposition testimony should have been admitted under Code of Civil Procedure section 2025.620, subdivision (c), and that the trial court erroneously excluded it for Jones' failure to subpoena Abrams. We disagree.

**1. *The Relevant Proceedings Below***

After presenting witnesses, Jones' counsel moved to admit into evidence Abrams' deposition testimony. Williams' counsel objected on the ground that Jones needed to show the witness was unavailable in order for the deposition transcript to be admitted. Jones' counsel responded that Abrams' office was in Southern California, beyond the range of a subpoena, to which the court responded that the subpoena power extended throughout the state.

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[3] Although Williams points out that Jones relied on Evidence Code section 1271 below, she does not argue that Jones forfeited his appellate claim by failing to cite Evidence Code section 1261 as a basis for the worksheet's admission in the trial court. Therefore, we do not address this issue.

Next, Jones' counsel argued that Abrams' testimony was "pretty key" and that, "if he's not willing to show up and talk about how he drafted [the Declaration of Trust] and whether or not it was in accord with Ms. Turner's trust, certainly Your Honor should review his deposition testimony to evaluate that because the intent is the issue." Asked why he thought he could call Abrams simply because he was listed on Williams' witness list, he said he would not "subpoena a witness who was going to come for another party."

The court focused on "whether or not the witness is unavailable as to whether we can use his transcript from his deposition in lieu of his testimony." Jones responded that he was expecting Abrams to testify because his name was on Williams' witness list and that, if the court did not admit the transcript, he would seek a trial continuance in order to subpoena Abrams. Williams objected to a trial continuance because trial had already been continued once and he had not committed to calling Abrams as a witness.

Upon Jones' renewed request for the admission of the deposition transcript, the court stated, "The question is whether or not he's unavailable as defined by the Code of Civil Procedure. I hate to say this, but I think your reliance upon your opponent's list of possible witnesses for this trial doesn't come under the definition of unavailability. So at this point I have to deny your request for this transcript to be admitted."

**2. *Analysis***

Code of Civil Procedure section 2025.620, subdivision (c) provides in relevant part that at trial in an action, a deposition of any person may be used against any party who is present or represented at the taking of the deposition if the court finds:

"(1) The deponent resides more than 150 miles from the place of the trial or other hearing.

"(2) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is any of the following:

"(A) Exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant.

"(B) Disqualified from testifying.

"(C) Dead or unable to attend or testify because of existing physical or mental illness or infirmity.

"(D) Absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process.

"(E) Absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process."

Jones argues that the court should have admitted Abrams' deposition testimony under Code of Civil Procedure section 2025.620, subdivision (c)(1) because his counsel below "asserted that Mr. Abrams lived more than 150 miles away from the trial location by stating that he resided in Southern California." He contends subdivision (c)(1) does not require a showing of unavailability and asserts that the trial court erred in excluding Abram's deposition testimony based on the mistaken belief that Jones had to show Abrams was unavailable to testify.

Jones' argument lacks merit. His counsel did *not* assert that Abrams *resided* more than 150 miles from the court. Rather, his counsel asserted, without presenting any evidence, that Abrams was beyond reach of a

subpoena because his *office* was in "Southern California." In other words, Jones' counsel never raised the issue of, or presented any evidence regarding, Abrams' *residence* to show Abrams' deposition testimony should be admitted under Code of Civil Procedure section 2025.620, subdivision (c)(1). Jones having failed to establish the predicate for admission under that subdivision, the trial court had no reason to consider the issue. This is especially so because the parties focused solely on whether Abrams' deposition testimony was admissible under circumstances relevant only to Code of Civil Procedure section 2025.620, subdivision *(c)(2)*, which requires in relevant part that the moving party show he could not compel the testimony of the deponent. (Code Civ. Proc., § 2025.620, subd. (c)(2)(E)). The trial court was not required to address an issue Jones never raised and for which no evidence was offered, and was entitled to focus on the issue he did address. It did not err in excluding Abrams' deposition testimony based on the record and argument presented to it.[4] Finally, even if the trial court had erred in excluding Abrams' deposition testimony, Jones has made no effort to show that he was prejudiced by the court's exclusion, which is a further reason we affirm. (See *People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10 ["A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner *that resulted in a manifest miscarriage of justice*" (italics added)].

[4] Williams does not argue that Jones forfeited this appellate claim either. Therefore, we do not address that issue.

## II.

### *Jones' "Substantial Evidence" Argument Lacks Merit.*

Based on the evidence that would have been provided by the 2000 worksheet regarding Turner's designation of her intended trust beneficiaries, combined with the other evidence he presented at trial, Jones also argues there was substantial evidence of mistake in the drafting of the subject trust. Although he does not make it clear, he apparently offers this argument to challenge the trial court's grant of Williams' motion for judgment under Code of Civil Procedure section 631.8 after Jones' presentation of his evidence. This argument also lacks merit.

#### A. The Relevant Proceedings Below

After Jones presented his evidence, Williams moved for a judgment in her favor on the ground that Jones had not met his burden of proving mistake. Jones argued that a last will and testament that Turner executed on the same date that she executed the Declaration of Trust mistakenly states she had no other children living or deceased besides Jones and Williams or grandchildren, which "indicated that she either didn't read it, is not familiar with it, or not able to have the time to read it." Jones suggested this indicated Turner did not read the Declaration of Trust either. He also contended other mistakes were made regarding the Declaration of Trust, emphasizing testimony by the notary that Turner wanted to add Jones as a successor trustee and make other changes. Williams responded that any error in the will was not material to the trust, and that any desire by Turner to amend her trust did not affect the validity of the Declaration of Trust that she executed. The court granted Williams' motion and subsequently issued a judgment in Williams' favor. In its judgment, it characterized Williams'

motion for judgment as having been made under Code of Civil Procedure section 631.8.

**B. Analysis**

Code of Civil Procedure section 631.8, subdivision (a) provides in relevant part: "After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party . . . ."

The purpose of section 631.8 " ' " ' "is . . . to dispense with the need for the defendant to produce evidence . . ." ' " where the court is persuaded that the plaintiff has failed to sustain its burden of proof.' " (*Medrazo v. Honda of North Hollywood* (2012) 205 Cal.App.4th 1, 10 (*Medrazo*), abrogated in part on another ground by *Veera v. Banana Republic, LLC* (2016) 6 Cal.App.5th 907, 919.)

" 'The standard of review after a trial court issues judgment pursuant to Code of Civil Procedure section 631.8 is the same as if the court had rendered judgment after a completed trial—that is, in reviewing the questions of fact decided by the trial court, the substantial evidence rule applies. An appellate court must view the evidence most favorably to the respondents and uphold the judgment if there is any substantial evidence to support it. [Citations.] However where . . . we are called upon to review a conclusion of law based on undisputed facts, we are not bound by the trial court's decision and are free to draw our own conclusions of law. [Citation.]' " (*Medrazo*, *supra*, 205 Cal.App.4th at p. 10.)

Putting aside Jones' apparent mistaken view that we must reverse if he shows there was substantial evidence of mistake (rather than affirm if there

is substantial evidence to support the trial court's ruling), his argument lacks merit. He argues that the 2000 worksheet, combined with evidence that Turner executed a last will and testament in which she erroneously indicated that Jones and Williams were her only children and which was not properly witnessed, shows "there was negligent drafting and mistake in the execution of the trust."

His amorphous argument (also unadorned by citation to legal authority) lacks merit. As we have already discussed, Jones does not establish that the court erred in excluding Turner's worksheet and, therefore, we do not consider the worksheet in assessing the sufficiency of the evidence. As to the mistakes in the will, Jones fails to explain why any error regarding the will necessarily indicates there was a mistake in the drafting of the trust. It is not reasonable to infer there was a mistake in the trust simply because there was a mistake in the will; and any such inference would amount to speculation. (See *People. v. Morris* (1988) 46 Cal.3d 1, 21 ["A reasonable inference . . . 'may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work' "], disapproved in part on other grounds in *In re Sassounian* (1995) 9 Cal.4th 535, 543, fns. 5 & 6, followed in *People v. Cluff* (2001) 87 Cal.App.4th 991, 1002 ["By definition, 'substantial evidence' requires *evidence* and not mere speculation"].) But even if such an inference could permissibly be drawn, the trial court was not bound to accept it. The trial court's grant of Williams' motion was correct because there was substantial evidence to support its decision.

## III.

### *Williams' Cross-Appeal Is Moot.*

In her cross-appeal, Williams argues we should reverse the trial court's denial of her pretrial motion to dismiss Jones' petition as untimely or, in the alternative, affirm the rulings appealed from. In light of our affirmance of the rulings appealed from, we need not address this protective cross-appeal and we therefore dismiss it as moot. (*Jones & Matson v. Hall* (2007) 155 Cal.App.4th 1596, 1611 [protective cross-appeal dismissed as moot upon affirming the rulings appealed from because "only a party who is aggrieved may appeal from a judgment or appealable order"]; *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 546 [dismissing protective cross-appeal as moot upon affirmance of opposing party's appeal], superseded in part by statute on another ground as stated in *UFW v. Dutra Farms* (2000) 83 Cal.App.4th 1146, 1163-1164.)

## DISPOSITION

The judgment appealed from is affirmed. Williams' cross-appeal is dismissed as moot. Williams is awarded costs of appeal.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

*Jones v. Williams* (A156687; A156891)