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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of EDEN AHBEZ, Deceased.

DEBRA GUESS,

Petitioner and Respondent,

v.

JOSEPH ROMERSA,

Objector and Appellant.

D085918

(Super. Ct. No. PRIN2200674)

APPEAL from an order of the Superior Court of Riverside County,
Russell Moore Velasquez, Judge. Affirmed.

Fox Rothschild, Sean R. Kenney, and Eric Andrew Bevan, for Petitioner
and Respondent.

Romersa Law and Julie M. Romersa, for Objector and Appellant.

I. INTRODUCTION

Respondent Debra Guess filed a petition seeking to establish ownership
of certain property, including copyrights, from Eden Ahbez's trust (Ahbez

Trust), pursuant to Probate Code,¹ section 850. Joseph Romersa, beneficiary and successor trustee to the Ahbez Trust and executor of Ahbez's estate, objected to the petition. The probate court found that Guess owned the copyrights and granted the petition.

Romersa appeals on three grounds. First, he contends Guess did not have standing to bring the petition. Second, he argues the probate court lacked subject matter jurisdiction over the petition. Third, he asserts the probate court's rulings were an abuse of discretion and lacked evidentiary support. We reject each ground and affirm.

II. BACKGROUND

During his life, Eden Ahbez composed a substantial catalog of music, including the song "Nature Boy," recorded by Nat King Cole in the late 1940s. Ahbez copyrighted his compositions. The copyrights are recorded with the Library of Congress, while the royalties, almost all from Nature Boy, are managed by The American Society of Composers, Authors & Publishers (ASCAP). The royalties from Nature Boy are significant.

In 1979, David Janowiak, Guess's stepfather, met Ahbez in Desert Hot Springs, California, while Ahbez lived in a motel in Indio, California. At the time, Janowiak sold real estate. Janowiak initially would assist Ahbez with tasks. They eventually became friends. Joseph Romersa is a producer and sound engineer who worked with Ahbez on Ahbez's music during the last seven years of Ahbez's life.

In March 1992, Ahbez executed a will. He named Janowiak executor and bequeathed to him all Ahbez's property, including the copyrights to his

¹ All subsequent statutory references are to the Probate Code unless otherwise specified.

songs. Later that year, Ahbez formed the Ahbez Trust, into which he placed all his real and personal property, including the copyrights. He named Janowiak as trustee and Romersa as successor trustee, to serve if Janowiak was unable. Ahbez also named both Janowiak and Romersa as beneficiaries, with Janowiak to receive all Ahbez's real and personal property, except "the musical instruments, tapes, records, etc." in Romersa's possession.

In 1995, Ahbez died in a car accident. Janowiak did not probate Ahbez's will but submitted documents to the Library of Congress to transfer to himself Ahbez's copyrights. Janowiak then began collecting royalties from the copyrights. He deposited the copyrights, and royalties, in the Janowiak Family Trust. Janowiak died in 2012, and his wife, Geraldine, died in 2022. Guess, as successor trustee of Janowiak's trust, then took control of the copyrights and began collecting royalties.

In 2022, 27 years after Ahbez's death, Romersa filed a petition for probate of Ahbez's will. (§ 8000.) Following briefing and a hearing, the probate court granted Romersa's petition, ordered the will into probate, and named Romersa as executor.

In that probate action, Guess filed the petition to confirm trust property. In response, Romersa filed a motion to strike the petition under the anti-SLAPP statute,² followed by an opposition to the petition. The court

² "Code of Civil Procedure section 425.16 provides a procedure for the early dismissal of what are commonly known as SLAPP suits (strategic lawsuits against public participation)—litigation of a harassing nature, brought to challenge the exercise of protected free speech rights." (*Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 665, fn. 3.)

denied the anti-SLAPP motion and set a hearing on the petition. Romersa chose not to appear at the hearing, either personally or through counsel.³

Based on the entirety of the record, the court found that Ahbez's property transferred to Janowiak pursuant to the Ahbez Trust and then to Guess as Janowiak's successor trustee and beneficiary of the Janowiak Trust. Accordingly, the trial court issued an order concluding that "[t]he entirety of the Eden Ahbez music catalog, [including] all copyrights and other intellectual property rights owned by Eden Ahbez as of 10-14-1992, and all royalties derived therefrom, are the property of, and are payable to Debra Guess as trustee of" Janowiak's trust.

Romersa timely appealed.

III. DISCUSSION

A. *Guess Had Standing to Bring the Petition*

Romersa first argues Guess lacked standing to bring the petition because Guess did not meet the requirements of section 850, subdivision (a)(3)(A).⁴ We disagree.

1. Requirements for Bringing a Section 850 Petition

As relevant here, a trustee or "any interested person" has standing to bring a petition under section 850 under specific circumstances, including: (1) "[w]here 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," or (2) "[w]here the trustee has a claim to real or personal property, title to or

³ During the hearing, the probate court contacted Romersa's counsel by telephone. She confirmed Romersa would not be appearing due to what he perceived as deficiencies in notice.

⁴ Romersa also argues Guess lacked standing to bring the petition under section 17200. Because Guess had standing under section 850, we do not separately address whether she had standing under section 17200.

possession of which is held by another.” (§ 850, subds. (a)(3)(A) & (B).)

Section 48 defines an “interested person” as “any [] person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.” (§ 48, subd. (a)(1).)

If an individual meeting these requirements seeks an order “concerning the transfer of property of the trust” the individual *must* do so by filing a section 850 petition. (§ 17200.1; *Mota v. Superior Court* (2007) 156 Cal.App.4th 351, 356.)

2. Standard of Review

“Standing is a question of law that courts typically review de novo.” (*Loeber v. Lakeside Joint School District* (2024) 103 Cal.App.5th 552, 570.) However, “standing for purposes of the Probate Code is a fluid concept dependent on the nature of the proceeding before the trial court and the parties’ relationship to the proceeding, as well as to the trust (or estate).” (*Arman v. Bank of America* (1999) 74 Cal.App.4th 697, 702–703.)

Section 48 explains that “[t]he meaning of ‘interested person’ as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.” (§ 48, subd. (b).) “Because the determination of whether a party is an interested person pursuant to Probate Code section 48 is subject to the probate court’s discretion, we apply the deferential abuse of discretion standard in reviewing [that] determination.” (*Estate of Prindle* (2009) 173 Cal.App.4th 119, 126.)

Whether a petitioner qualifies for the section 850 scenarios is a question of fact subject to substantial evidence review. (*Estate of Myers* (2006) 139 Cal.App.4th 434, 440.)⁵

3. Guess Was an “Interested Person”

First, the probate court did not abuse its discretion by concluding Guess was an interested person. Guess, as Janowiak’s successor trustee and beneficiary, had a property right in, or claim against, the Ahbez Trust. Janowiak was the named beneficiary of the Ahbez Trust with respect to the copyrights. After Ahbez’s death, Janowiak submitted the will and trust documents to the Library of Congress to transfer ownership of the copyrights to himself and, thereafter, collected royalties. Notably, Romersa confirmed at a hearing on his probate petition his belief that Janowiak was “in charge” or “in control” of the copyrights in question after Ahbez’s death. Then, after the death of Janowiak and his wife, Guess took possession of the copyrights as trustee and beneficiary of the Janowiak trust. At the time Romersa initiated the probate proceedings, Guess was collecting royalties.⁶

4. Guess Satisfied the Remaining Requirements of Section 850

As detailed *supra*, an interested person may bring a section 850 petition under either of two opposite situations: (1) the trustee is in possession of, or holds title to, the subject property, and the property is claimed by another individual; or (2) another individual holds title to, or

⁵ Despite the various applicable standards of review, for the reasons detailed *post*, the probate court’s finding that Guess had standing to bring the petition must be affirmed under any standard.

⁶ During the pendency of the probate proceedings, Romersa caused ASCAP to stop sending royalty payments to Guess.

possession of the property, and the property is claimed by the trustee. (§ 850, subd. (a)(3)(A) & (B).)

Guess purportedly brought the petition under section 850, subdivision (a)(3)(A), and the parties' arguments focus on that provision. In his reply, however, Romersa acknowledges an individual may bring a petition regarding trust property under either part (A) or (B) of subdivision (a)(3). Substantial evidence supports the probate court's finding that Guess met the requirements of section 850, under one or both provisions.

Specifically, in the petition, Guess asserted that Ahbez transferred "all intellectual property rights" to the copyrights to his trust and sought the probate court's determination of whether Janowiak took ownership of those intellectual property rights as trust beneficiary. For standing purposes, we treat as true Guess's properly pled allegations. (*Barefoot v. Jennings* (2020) 8 Cal.5th 822, 827.) It follows that either Guess held the titles to the copyrights, or they remained in Ahbez's trust, and Romersa, as trustee, held those titles. (See *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 522 [trustee holds legal title to property owned by trust].) Either way, substantial evidence supports a finding that Guess or the trustee held the titles to the copyrights, as required by section 850, subdivisions (a)(3)(A) and (B).

Similarly, substantial evidence supports a finding that Guess satisfied the requirement under either provision that she or the trustee claimed the property. Guess's stated purpose in filing the petition was "to assert her legal claim to [the copyrights] and specifically to quiet a competing claim to the intellectual property asserted by . . . Romersa." On the other hand, before Guess filed the petition, Romersa identified himself in the probate

proceedings as trustee and asserted that the Ahbez Trust “left the [copyrights] either outside of the trust or to Joe Romersa.”

As Guess satisfied all the requirements of section 850, subdivision (a)(3), whether under subpart (A) or (B), the probate court did not err by finding Guess had standing to bring the petition.

B. Romersa Has Not Shown Any Defect in Notice

Next, Romersa argues the trial court lacked subject matter jurisdiction over the petition because Guess did not provide sufficient notice of the hearing to all indispensable parties, namely Romersa in his capacities as trustee of the Ahbez Trust and personal representative of Ahbez’s estate. Guess contends any lack of notice was not a jurisdictional issue, and Romersa received notice. As we shall explain, Romersa’s argument is unpersuasive, regardless of whether his claim is characterized as a challenge to the probate court’s subject matter jurisdiction or an assertion of a facial defect in notice.⁷

1. Section 851’s Notice Requirement

Section 851 provides the notice requirement for a petition filed under Section 850. As relevant here, pursuant to section 851, “[a]t least 30 days prior to the day of the hearing,” the petitioner must serve notice of the hearing and a copy of the petition in compliance with Civil Procedure Code

⁷ In his reply brief, Romersa asserts for the first time that the alleged defects in notice deprived him of due process under the California Constitution. “[W]e do not consider arguments raised for the first time in a reply brief.” (*Doe v. McLaughlin* (2022) 83 Cal.App.5th 640, 657; see *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 855 [declining to consider new due process argument raised for the first time in a reply brief].)

section 413.10 on “[t]he personal representative, conservator, guardian, or trustee as appropriate.” (§ 851, subd. (a).)⁸

2. Standard of Review

We review notice under section 851 de novo, whether based on a challenge to subject matter jurisdiction or a facial defect in notice. (*Corrales v. California Gambling Control Com.* (2023) 93 Cal.App.5th 286, 302 [“ ‘ “Where the evidence is not in dispute, a determination of subject matter jurisdiction is a legal question subject to de novo review.” ’ ”]; *Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1434, 1441 [“[W]e review the trial court’s finding of a facial defect in service de novo.”].)

3. Romersa Shows No Defect in Notice

Even assuming notice on all indispensable parties was required to confer upon the probate court subject matter jurisdiction over the petition, and further assuming Guess was required to give notice to Romersa both as trustee of the Ahbez Trust and personal representative of the estate, Romersa’s arguments that notice was defective are unpersuasive.

As to Romersa as trustee, his general appearances in the action cured any alleged defects in notice. (Code Civ. Proc., § 410.50, subd. (a); *Fireman’s Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1145.)

⁸ Section 851, subdivision (b) provides, in relevant part: “*Except for those persons given notice pursuant to subdivision (a), notice of the hearing, together with a copy of the petition, shall be given . . . as provided in Section 17203 if the matter concerns a trust . . .*” (§ 851, subd. (b), italics added.) Romersa does not argue that subdivision (b) applies here with respect to notice in his capacities as trustee or personal representative. Based on its plain language, it appears subdivision (b) does not apply because Romersa was due notice under subdivision (a).

On February 15, 2024, Guess provided notice of the hearing and a copy of the petition to Romersa, without specifically identifying Romersa's capacity. After this notice, Romersa made two general appearances: First, by filing an anti-SLAPP motion. And, second by filing an opposition to the petition. (See Code Civ. Proc., § 1014 [general appearance made when party filed a notice of motion to strike]; *Sunrise Financial, LLC v. Superior Court* (2019) 32 Cal.App.5th 114, 125 ["[O]pposing a motion other than on jurisdictional grounds normally constitutes a general appearance."].) Within these pleadings, Romersa did not expressly limit his appearances and/or arguments to any interest solely as an individual. In fact, he affirmatively identified himself as "the successor trustee" and "the sole successor trustee." He also acknowledged Guess could have been proceeding against him "as successor trustee of the Eden Ahbez Trust."

In making these general appearances, Romersa was representing his interests as trustee, not merely as an individual. (See *Creed v. Schultz* (1983) 148 Cal.App.3d 733, 740 [" 'An act of a defendant . . . which may reasonably be construed to imply that the court has, in [the] action, acquired jurisdiction of the person of the defendant, will be equivalent to an appearance.' "].) Having made these general appearances under the role of trustee, he may not now challenge the sufficiency of the notice on him in that capacity. (*Ibid.* [" 'As a rule one cannot avail himself of the advantage of being a party and escape the responsibilities.' "].)

We now turn to Romersa as the personal representative of the estate. On May 1, 2024, Guess provided timely notice of the hearing and a copy of the petition to Romersa in his capacity as executor.⁹

Accordingly, Romersa cannot show that notice was defective.

C. Romersa Has Failed to Establish Any Other Error

Romersa's final argument is unclear. He lists purported abuses of discretion and argues that "the sheer volume of abuse warrants a de novo review." In addition, he appears to challenge, generally, the sufficiency of the evidence to support the court's ultimate order on the petition. We find no error.

1. Romersa's Abuse of Discretion Arguments Fail

From what we can discern, Romersa asserts the probate court abused its discretion in several ways. First, he argues the court deprived him of sufficient time to respond to the petition after denying his anti-SLAPP motion. Second, he challenges the court's decision to grant the petition as a punitive measure for Romersa's failure to appear at the hearing. Third, he argues the court ignored the law and issued an insufficiently descriptive or overbroad order. Fourth, he contends the court set an excessive bond when it appointed Romersa executor of Ahbez's estate.

To the extent Romersa argues the probate court gave him insufficient time to respond to the petition and granted the petition as a form of sanction, his arguments are not supported by the record.

⁹ The February 15, 2024 and May 1, 2024 notices of hearing and proofs of service filed with the probate court are not accompanied by a copy of the petition. However, the proofs of service are signed under penalty of perjury and indicate that copies of the petition were served along with the notices of hearing.

Romersa argued before the probate court that he had 30 days from the date of denial of his anti-SLAPP motion to answer the petition. The court denied the anti-SLAPP motion on April 30, 2024, and set a hearing on the petition for July 26, 2024, well beyond the 30-day period for Romersa to respond to the petition.

As to sanctions, although the court recognized that granting the petition would be the “appropriate sanction” for Romersa’s failure to appear, ultimately, it did not grant the petition as a sanction. As discussed *post*, the court granted the petition based on evidence that Guess was the owner of the copyrights. In fact, Guess withdrew as moot her request for an order to show cause regarding sanctions following entry of the order granting the petition. Rather than granting the petition as a form of sanction, the court stated its intent to sanction Romersa’s counsel in an amount “not to exceed \$500.”

To the extent Romersa questions the probate court’s adherence to the law and the contents of its order, those claims are unsupported by sufficient facts, authority, or cogent argument. (*County of Sacramento v. Singh* (2021) 65 Cal.App.5th 858, 861; *Hearn Pacific Corp. v. Second Generation Roofing, Inc.* (2016) 247 Cal.App.4th 117, 150.)

To the extent Romersa purports to challenge the bond amount and the court’s consideration of “elder abuse and undue influence,” he raised those issues in the probate court only with respect to his petition for probate. Since he did not raise those issues below with respect to Guess’s petition, we do not consider them here. (See *Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 770 [finding an undeveloped argument raised in a “cursory manner” and buried within another argument did not adequately raise the issue in the trial court or preserve the issue for appeal].)

2. Sufficiency of Evidence

Romersa also appears to argue, generally, that the probate court's order granting the petition is not supported by sufficient evidence. To this end, he maintains the probate court was required to find clear and convincing evidence that ownership of the copyrights transferred out of Ahbez's estate. Even accepting Romersa's assertion that some, or all, of the probate court's factual findings underlying its order on the petition had to be supported by clear and convincing evidence, the court's order was sufficiently supported.

When a court of appeal "review[s] a [trial court's] finding that a fact has been proved by clear and convincing evidence, the question before [it] is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995–996.) "Consistent with well-established principles governing review for sufficiency of the evidence, in making this assessment the appellate court must view the record in the light most favorable to the prevailing party below and give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence." (*Id.* at p. 996.)

Here, substantial evidence supports the probate court's finding that the copyrights at issue passed through the Ahbez Trust to Janowiak and, through his trust to Guess. Specifically, the court had a copy of the trust instrument which placed the contested copyrights into the Ahbez Trust and provided they were to pass to Janowiak upon Ahbez's death. It also had copies of Ahbez's will and trust documents that Janowiak sent to the Library of Congress for purposes of transferring ownership of the copyrights. In addition, the court had copies of documents establishing the David J. and

Geraldine E. Janowiak Living Trust, which placed the contested copyrights into that trust and named Guess as successor trustee and sole beneficiary in the event of the deaths of Janowiak and his wife. Finally, the court had copies of death certificates for Janowiak and his wife.

IV. DISPOSITION

The probate court's order granting the petition is affirmed. Costs on appeal are awarded to respondent, Debra Guess.

RUBIN, J.

WE CONCUR:

O'ROURKE, Acting P. J.

BUCHANAN, J.