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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DAVID HERBERT STERNE,

Plaintiff and Appellant,

v.

MIRIAM JEAN STERNE et al.,

Defendants and Respondents.

B289907

(c/w B290099)

(Los Angeles County

Super. Ct. Nos. 16STPB05963 &
17STPB00594)

APPEAL from orders of the Superior Court of Los Angeles
County. William P. Barry, Judge. Reversed.

The Law Office of John Derrick and John Derrick for
Plaintiff and Appellant.

No appearance for Defendants and Respondents.

In the probate court, David Herbert Sterne (David)¹ filed two petitions concerning two qualified personal residence trusts (QPRTs).² After he voluntarily dismissed his petitions with prejudice, the four successor trustees of the QPRTs filed a joint motion for attorney fees in each of the two proceedings. The probate court granted the motions for attorney fees in their entirety, and David appeals, arguing that because his petitions were not frivolous or filed in bad faith, attorney fees should have been denied.

We reverse the probate court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal concerns two related trusts and the family members affected thereby. Lionel Sterne (Lionel) and Bernice M. Sterne (Bernice) were married. They shared seven children, including David, Miriam, Harrison, Judith, and Paul.³

¹ Because the parties involved share the same last name, we refer to the parties by their first names. No disrespect is intended.

² A QPRT is a tax savings mechanism through which a parent may transfer a residence to a child at a dramatically reduced tax cost. With a QPRT, the grantor or "term holder" transfers a residence to the QPRT and retains the right to live in and use the residence for a specified term of years. During the QPRT term, the property is held for the sole benefit of the grantor. At the end of the QPRT term, the trust terminates and the assets are distributed to the grantor's beneficiaries. (*In re Ferrante* (Aug. 26, 2015) 2015 Bankr. LEXIS 2854, p. *3.)

³ Based upon representations in David's opening brief, it appears that Lionel was David's step-father; it is unclear whether

On December 22, 1997, two QPRTs were established: the Lionel Sterne QPRT and the Bernice M. Sterne QPRT.

David's First Petition

On November 9, 2016, David filed a verified petition concerning these two QPRTs. According to his petition, Lionel and Bernice transferred a house to the two QPRTs, with one-half going to Lionel's and one-half going to Bernice's. The house was the only asset of the QPRTs. Each QPRT provided for a trust term of 10 years. During that time, the trustor of each QPRT (Lionel and Bernice) would be the sole trustee and, after that, the successor cotrustees would be four of their children: Miriam, Harrison, Judith, and Paul (collectively the successor trustees). The QPRTs also provided that a month after the end of the 10-year fixed term, the successor trustees would transfer the remaining balance of the trust estate into equal proportions to Lionel and Bernice's seven children.

Even though the distributions should have been made in 2008, the successor trustees never made them.

Bernice passed away in 2013. In October 2015, Lionel, purportedly acting as the trustee of both QPRTs, transferred the house to his own personal trust.

On October 17, 2016, Lionel transferred the house back to the QPRTs. On that same date, Miriam recorded an affidavit of change of trustee for both QPRTs, naming herself, Harrison, Judith, and Paul as the successor trustees.

the other children were biological children of both parents or just one.

The petition concluded by asking for, inter alia, an order directing the successor trustees to deliver a one-seventh share of the property to David.

January 18, 2017, Hearing on David's First Petition

At a case management hearing, the probate court found David's petition procedurally improper because it sought relief with respect to two separate trusts. Accordingly, it determined that this first petition would apply to Lionel's QPRT, and it directed David to file a separate petition as to Bernice's QPRT.

David's Second Petition

On January 24, 2017, David filed a second verified petition, specifically relating to Bernice's QPRT. In addition to the allegations set forth in the first petition, this petition alleged that on January 13, 2017, the successor trustees did in fact transfer the interests of the two QPRTs to the beneficiaries, including David. However, David had other concerns, which prompted the necessity of this petition. Specifically, there was no evidence that the beneficiaries had received clean title to the house. And, in light of Lionel's prior act of transferring the house from the two QPRTs to his personal trust, David requested a policy of title insurance paid for by the successor trustees.

Successor Trustee Objections to the Petitions

On April 26, 2017, Miriam, Harrison, and Judith filed objections to both petitions.⁴ They asserted, inter alia, that with the transfer on January 13, 2017, of the house to the seven children, there was no further trust administration remaining.

⁴ Based upon what was provided to us in the appellant's appendix, it appears that Paul did not file an objection to either one of David's petitions.

Regarding David's request for a title insurance policy, the three cotrustees stated that they were not obliged to do so and, even if they were, there were no funds in the QPRTs to pay for it. They asked that David's petitions be dismissed and that they be awarded costs; they did not request attorney fees.

David's Supplemental Declarations

On April 27, 2017, David filed supplemental declarations in support of his petitions. Attached to the declarations was a letter from Lionel's attorney to David's attorney in which she stated that all seven children "knew of the terms of Lionel's QPRT and Bernice's QPRT from inception through the end of the fixed term in 2008." David also provided the probate court with two documents titled "Consent to Use Property," signed by Miriam and Harrison (Consents). In these Consents, Miriam and Harrison each stated that they were aware in 2008 that the fixed term of both QPRTs had ended and that they were each entitled to a one-seventh interest in the home as well as the right to receive rent from Lionel and Bernice. However, Miriam and Harrison had consented to both Lionel and Bernice living in the home, and, after Bernice passed away, for Lionel to remain there.

David's Voluntary Dismissal of the Petitions

On November 7, 2017, David dismissed the two petitions with prejudice.

Successor Trustees' Motions for Attorney Fees

Approximately one month later, the successor trustees moved for attorney fees in both petition proceedings.⁵ They asserted that David's attorney had represented that David intended to dismiss the petitions two business days before the matter was set to be tried. Thus, they urged the probate court to find "that David's petitions were brought and prosecuted in bad faith," entitling them to attorney fees.

In support of their motions, the successor trustees asserted: "Upon learning that they were named as Co-Trustees of the Trust[s], the Former Co-Trustees immediately worked to, and did distribute the Residence to the seven beneficiaries." In other words, the successor trustees claimed that they acted promptly once they assumed their duties as trustees; therefore, they did not do anything wrong. Notably, the successor trustees did not provide supporting declarations.

The successor trustees also asserted that David was not entitled to clear title.

The motions requested \$74,824.50 in attorney fees for the litigation relating to the two petitions. Paul's attorney claimed fees beginning in December 2016 (before the QPRTs' asset was distributed on January 13, 2017). Miriam, Harrison, and Judith's attorney claimed fees beginning January 4, 2017, again before the property interests were distributed on January 13, 2017.

⁵ Paul was separately represented from Miriam, Harrison, and Judith. The successor trustees, with the two sets of attorneys, filed a joint motion for attorney fees in each of the two proceedings.

Specifically, the successor trustees sought \$37,412.25 in connection with the litigation relating to each of the two petitions. That number represented \$37,166 incurred on behalf of Miriam, Harrison, and Judith, and \$37,658 incurred on behalf of Paul.

David's Opposition

David opposed the motions. He pointed out that on October 9, 2016, his attorney had demanded that Miriam distribute the QPRTs' property and payment of back rent. He also referred to the letter from Lionel's attorney, indicating that all seven children (including the successor trustees) knew of the terms of the two QPRTs from their inception and the signed statements from Miriam and Harrison, indicating their familiarity of the two QPRTs from 2008 and their consent to Lionel and Bernice living in the house rent-free.

David also argued that even if the successor trustees' version of events was true, it still took them four months from when they assumed their trustee duties to when they actually made the trust distributions, and even this only took place after David filed his first petition.

David further questioned the amount of fees requested, noting that no motions had been filed, no depositions had taken place, and discovery had been limited. And, with two sets of attorneys, there was unnecessary duplicative effort.

In defending his filing of two petitions, David asserted that he had to file two petitions because of Lionel's erroneous transfer of the house out of the two QPRTs to his personal trust. That misconduct was only cleared up after David filed and prosecuted the two petitions.

Hearing on Motions for Attorneys Fees; Appeals

On January 19, 2018, the probate court entertained oral argument on the successor trustees' motions. Thereafter, it found the motions "reasonable" and determined that "the law require[d]" it to award attorney fees. Ultimately, it granted the motions in their entirety. Specifically, the orders provide "that David . . . personally pay [the successor trustees'] attorneys' fees." The successor trustees were also granted a lien on David's share of his trust distribution.

David's timely appeals from the two orders ensued.

DISCUSSION

I. Applicable law and standard of review

It is well-established that a "probate court may apply general equitable principles in fashioning remedies and granting relief." (*Estate of Kraus* (2010) 184 Cal.App.4th 103, 114.) Under its equitable powers, as David acknowledges in his opening brief, the probate court has the authority to charge one beneficiary's share of the estate for the attorney fees and costs the estate incurred in defending against frivolous claims or claims made in bad faith. (*Estate of Ivey* (1994) 22 Cal.App.4th 873, 883, 885; *Chatard v. Oveross* (2009) 179 Cal.App.4th 1098, 1108; *Rudnick v. Rudnick* (2009) 179 Cal.App.4th 1328, 1334.)

"On appeal, our function is limited to determining if there is any substantial evidence to support the trial court's order. We may not reweigh the evidence or substitute our discretion for that of the trial judge. [Citations.]" (*Estate of Ivey, supra*, 22 Cal.App.4th at pp. 881–882.)

II. The probate court's orders awarding attorney fees are reversed

In light of the unopposed arguments presented in David's opening brief, we reverse the probate court's orders awarding

attorney fees against him and in favor of Miriam, Harrison, Judith, and Paul. First, it appears that the probate court imposed attorney fees against David personally, not simply out of his share of the trust estates. Such orders were “beyond the equitable power of the [probate] court.” (*Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 189.) Our analysis could stop here.

For the sake of completeness, we note the following. When David filed the first petition in 2016, he sought his share of distributions that should have been made in 2008. And, he was successful. After filing that first petition, the successor trustees assumed their duties and, in January 2017, distributed to David his one-seventh share of the QPRTs.

It is questionable whether the second petition was frivolous. But, the successor trustees requested attorney fees relating to both petitions, on the grounds that David prosecuted both petitions in bad faith. Because the successor trustees did not differentiate their attorney fees, and we conclude that David’s first petition was not frivolous or pursued in bad faith, the entire attorney fee award is reversed.

Finally, we note that in his opposition to the motions, David asserted that the fee request was “overblown,” and that much of the work by the successor trustees’ attorneys was duplicative and unnecessary. The successor trustees did not respond to this point in their reply briefs. David’s point is well-taken. After reviewing the declarations and supporting documents attached to the successor trustees’ motions, the fee request appears duplicative and excessive. Absent any evidence or argument demonstrating that the fee award should simply be reduced, we reverse the fee award in its entirety.

DISPOSITION

The orders awarding attorney fees are reversed. David is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ