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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

Estate of RUTH ROBERTSON,
Deceased.

B250800

(Los Angeles County
Super. Ct. No. P697889)

LORY C. HILLYARD,

Petitioner and Appellant,

v.

ROGER CALDWELL,

Objector and Respondent.

APPEAL from a judgment of the Superior Court for Los Angeles County,
Daniel S. Murphy, Judge. Reversed and remanded.

John August Mangini; Kassouni Law and Timothy V. Kassouni for
Petitioner and Appellant.

No appearance for Objector and Respondent.

Petitioner and appellant Lory C. Hillyard (Lory¹) appeals from the probate court's denial of his petition for an order determining his and his brother's entitlement to funds deposited with the clerk of the court for the benefit of their deceased mother. Those funds, which constituted one-half of the assets of the estate of Ruth Robertson (the sister of Lory's mother), had been deposited with the clerk in 1986 upon entry of the final decree of distribution of the estate. We conclude the probate court erred in denying the petition. Accordingly, we reverse the order and remand to the probate court for further proceedings.

BACKGROUND

Ruth Robertson died on January 8, 1985. In her last will and testament, she left one-half of her estate to her husband's sister, Margaret R. Verkruzen, and the other half to three of her siblings, Era B. Terry, Thomas M. Caldwell, and Mary Christine Hillyard,² share and share alike. With respect to the bequest to her siblings, the will provided: "If any of said persons should fail to survive distribution of the bequest made to them, I direct that the share of such decedent be distributed equally between the remaining of said persons."

The will was admitted to probate on May 23, 1985. In the final accounting and petition for final distribution, filed on May 28, 1986, the personal representative of the estate declared that Era B. Terry predeceased distribution of the estate (she passed away on October 7, 1985), and Thomas Caldwell passed away prior to the filing of the original petition for probate. The personal representative also declared that Mary could not be located (a report setting forth

¹ We refer to parties by their first names to avoid confusion.

² Mary Christine Hillyard was Lory's mother. She remarried, and at the time of her death her name was Mary Christine Odin. We will refer to her as Mary.

the representative's efforts to locate Mary had been previously filed with the court), and requested that the siblings' one-half share be distributed by way of intestate succession to Robertson's brother, James Caldwell, her only surviving relative.

The probate court entered its order settling final accounting and report of personal representative on September 3, 1986. The order stated, in relevant part: "Total assets in the estate at the time of this hearing are in the amount of \$114,954.99 / in cash and petitioner is hereby authorized and directed to distr[i]bute one-half of the remaining bal[a]nce after payment of fees and extraordinary expenses to Margaret Verkruzen and one-half of the remaining balance to be deposited with the County Treasurer for the benefit of Mary Hilard [sic] also known as Mary C. Caldwell." For reasons unknown, the money ordered to be deposited with the County Treasurer was deposited instead with the clerk of the Los Angeles County Superior Court. A "Long Term Trust Inquiry" provided to Lory's attorney by Christopher Quinones of the Revenue Management Division of the Superior Court confirms that \$54,988.99 is on deposit with the court; the funds were deposited with the court on January 7, 1987.

In April 2012, Roger Caldwell (Roger) filed a motion for an order authorizing payment of the amount deposited with the court, plus interest, stating that he was Mary's sole heir. In declarations filed in support of his motion, Roger stated that Mary was Roger's father's sibling, that Mary had no children, and that no proceeding had been conducted in California for administration of Mary's estate. Roger's motion was denied on May 29, 2012 by Commissioner Matthew St. George in a minute order stating: "The Court states its ruling as fully reflected in the official notes of the court reporter. [¶] Motion is denied." The reporter's transcript from the hearing on the motion is not included in the record on appeal, but Roger's counsel stated at the hearing on the present petition that she was

present at the earlier hearing, and that “Commissioner St. George said that the reason for the denial was because Mary Caldwell did not survive the distribution.”³

Lory filed the petition at issue here on January 3, 2013. The petition alleges that his mother is the “Mary Hilard also known as Mary C. Caldwell” named in the final decree of distribution of Robertson’s estate, and that he and his brother Jack W. Hillyard (Jack) are equal beneficiaries of Mary’s estate. The petition asks that the funds deposited with the clerk of the court by Robertson’s estate, plus interest on those funds, be distributed one-half to Lory and one-half to Jack.

Roger objected to Lory’s petition, and petitioned the probate court to determine heirship and divide the funds on deposit between all of Robertson’s heirs, i.e., Roger, Lory, and Jack. Roger argued that because Mary did not survive distribution of Robertson’s estate, she did not inherit under the terms of Robertson’s will, and therefore Mary’s heirs cannot make claim to the funds deposited with the clerk of the court. He contended that Robertson’s will did not include a residuary clause, so the remaining funds in her estate pass by intestate succession to her closest known living heirs, Roger, Lory, and Jack.

In response, Lory argued that the final decree awarding one-half of Robertson’s estate to Mary, even if erroneous, is final and conclusive and cannot now be attacked. (Citing *Estate of Wise* (1949) 34 Cal.2d 376 and *Estate of Callnon* (1969) 70 Cal.2d 150 (*Callnon*).) Roger, in turn, argued that the decree in this case is ambiguous, and therefore, the probate court must look to the will to determine the intent of the testator.

The probate court denied Lory’s petition in a minute order. The minute order states: “Petitioner is the daughter [*sic*] of Mary Hillyard, and Mary Hillyard

³ Lory’s counsel noted that neither he nor his client was at that hearing, which is unsurprising, given Roger’s position that Mary had no children and that he was her sole heir.

predeceased Ruth Robertson. Pursuant to Ruth Robertson’s will, all named beneficiaries of the will were required to survive distribution of the estate. [¶] If the parties wish for the Court to consider distribution by intestacy, all of Ruth Robertson’s heirs must be accounted for and given notice.”

Lory timely filed a notice of appeal from the probate court’s order.

DISCUSSION

On appeal, Lory contends the probate court erred by relying upon the terms of Robertson’s will despite the unambiguous language of the final decree ordering one-half of Robertson’s estate to be deposited with the County Treasurer for the benefit of Mary.⁴ We agree.

In *Callnon*, the Supreme Court made clear that once the deadline for appeal has passed, a decree of distribution of an estate, even if it erroneously interprets the decedent’s will, controls over the terms of the will. The Court observed: “‘The administration of a decedent’s estate involves a series of separate proceedings, each of which is intended to be final. . . .’ [Citations.] A decree of distribution is a judicial construction of the will arrived at by the court ascertaining the intent of the testator. [Citations.] Once final, the decree supersedes the will [citations] and becomes the conclusive determination of the validity, meaning and effect of the will, the trusts created therein and the rights of all parties thereunder. [Citations.] [¶] If the decree erroneously interprets the intention of the testator it must be attacked by appeal and not collaterally. [Citations.] If not corrected by appeal an ‘erroneous decree . . . is as conclusive as a decree that contains no error.’ [Citations.] It is well settled that ‘where the decree of distribution is contrary to the provisions in the will, the decree controls and prevails over the terms of the

⁴ We note that Roger did not file a respondent’s brief in this appeal.

will with respect to the distribution of the property.’ [Citations.] Only if the language of the decree is ‘uncertain, vague or ambiguous’ [citation] may resort be had to the will to interpret but not to contradict the decree. [Citations.] However, ‘if the distributive portions of the decree are free from ambiguity, . . . resort may not be had to the provisions of the will . . .’ in order to create an ambiguity. [Citation.]” (*Callnon, supra*, 70 Cal.2d at pp. 156-157, fns. omitted.)

As noted, the probate court’s order regarding distribution of the estate in the present case stated: “Total assets in the estate at the time of this hearing are in the amount of \$114,954.99 / in cash and petitioner is hereby authorized and directed to distr[i]bute one-half of the remaining bal[a]nce after payment of fees and extraordinary expenses to Margaret Verkruzen and one-half of the remaining balance to be deposited with the County Treasurer for the benefit of Mary Hilard [*sic*] also known as Mary C. Caldwell.”

There is no ambiguity in this order. It clearly orders distribution of one-half of Robertson’s estate to Mary. Had the original probate court wished to make the distribution to Mary contingent on her surviving the distribution, as stated in the will, it could have done so expressly or by referring to the will in the distribution order. (See, e.g., *Estate of Cooper* (1969) 274 Cal.App.2d 70, 75 [“where the decree, by its own terms, incorporates it the will may be looked to for varying purposes, such as: to supply matter omitted from the decree as well as also to clarify the decree’s ambiguities”].) But it did not do so.

“Where, as in the instant case, the decree was not challenged on appeal and is not ambiguous, we must insist that it remain unassailable against any attempt to attack it collaterally. In this way, we preserve the finality and conclusiveness of such decrees and guaranty the integrity and stability of titles to property.” (*Callnon, supra*, 70 Cal.2d at p. 161.) Because the order of distribution was not ambiguous, the probate court erred by resorting to the language of the will and

denying Lory's petition. We therefore reverse the order denying the petition and remand to the probate court with directions to order distribution of the funds held by the clerk of the court to Lory and Jack, and to determine the amount of interest, if any, that is owed to the recipients.

DISPOSITION

The order is reversed and the matter is remanded with directions to the probate court to order distribution to Lory and Jack of the funds deposited with the clerk of the court in Case No. P697889, and to determine the amount of interest, if any, that is owed to them. The parties shall bear their own costs on appeal.

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WILLHITE, Acting P.J.

We concur:

MANELLA, J.

COLLINS, J.