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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

YESENIA SANCHEZ, as Trustee, etc.,

Plaintiff and Respondent,

v.

JOSE SANCHEZ et al.,

Defendants and Appellants.

B293128

(Los Angeles County
Super. Ct. No. 17STPB02854)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Lesley C. Green and Barbara R. Johnson,
Judges. Affirmed.

Shaw Koepke & Satter and Jens B. Koepke for Defendants
and Appellants.

Wright Kim Douglas, David M. Kim and Abigail J.R.
McLaughlin; Benedon & Serlin, Gerald M. Serlin and Malinda W.
Ebelhar for Plaintiff and Respondent.

Appellants Jose Sanchez (Jose) and Noemi Sanchez (collectively, appellants) appeal from the judgment entered against them and in favor of respondent Yesenia Sanchez (Yesenia, or respondent), as trustee of the Celia Sanchez Trust dated December 22, 2006 (the Trust). We affirm the judgment.

BACKGROUND

Celia Sanchez (Celia) created the Trust in December 2006, naming her daughter Yesenia as the trustee, her son Jose as the successor trustee, and each of her six children, including Yesenia and Jose, as beneficiaries. The principal Trust asset is the Pomona, California home in which Celia lived.

On July 16, 2016, Celia executed two grant deeds for the Pomona property. The first grant deed, signed by Celia as the trustee of the Trust, conveyed title to herself as an individual. The second grant deed, signed by Celia as an individual, conveyed the property to Jose.

Celia died on January 3, 2017. On February 7, 2017, the two grant deeds Celia executed in July 2016 were recorded.

Probate Code section 16061.7 notice

On March 20, 2017, attorneys for Yesenia, as trustee of the Trust, sent by certified mail a notice pursuant to Probate Code section 16061.7 to all the Trust beneficiaries.¹ The notice included a copy of the Trust document and advised the recipients of the 120-day deadline for contesting the terms of the Trust:

“If you want to contest the terms of the Trust itself,
then there are strict deadlines on a trust contest.
Specifically, you may not bring an action to

¹ All further statutory references are to the Probate Code unless stated otherwise.

contest the trust more than 120 days from the date this Notification by the Trustee is served upon you or 60 days from the date on which a copy of the terms of the trust is mailed or personally delivered to you during that 120 day period, whichever is later.”

Probate Code section 850 petition

On April 3, 2017, Yesenia filed a petition under section 850, subdivision (a)(3)(B),² alleging that appellants had exerted undue influence on Celia to obtain title to the Pomona property and seeking to quiet title in the Trust. A hearing on the petition was set for June 12, 2017.

On June 9, 2017, Yesenia’s attorney, Abigail McLaughlin, received a phone call from Torrence Howell, counsel for appellants. Howell advised McLaughlin that he had a conflict with the June 12, 2017 hearing date, and requested a continuance. McLaughlin agreed to a two-week continuance and advised the trial court of Howell’s request. The court continued the hearing to August 1, 2017, and set a July 10, 2017 deadline for appellants to file an objection and response to the section 850 petition. McLaughlin served written notice of the continued hearing date and the July 10, 2017 deadline for filing an objection.

² Probate Code section 850, subdivision (a)(3)(B) states in relevant part: “(a) The following persons may file a petition requesting that the court make an order under this part: [¶] . . . [¶] (3) The trustee or any interested person in any of the following cases: [¶] . . . [¶] (B) Where the trustee has a claim to real or personal property, title to or possession of which is held by another.”

Appellants did not file an objection until July 31, 2017. The objection was not verified as required by section 1021.

At the August 1, 2017 hearing on the petition, Howell explained the reason for the late filing was a family emergency that required him to be out of the state. The court ordered Howell to file a verification to the objection as well as a supplemental filing to “determine if there is good cause to allow the late filing.” Yesenia’s counsel advised the court that the 120-day deadline for contesting the Trust had already expired,³ and that the objection appellants had filed challenged the validity of the Trust and was therefore essentially a Trust contest. The court told counsel that if Yesenia wanted a ruling on that issue, she would have to file an appropriate motion. The court then continued the hearing to October 10, 2017.

Appellants did not file verifications to their original objection. Instead, they filed a supplemental objection that did not address the 120-day limitations period. Concurrently with their supplemental objection, appellants filed a declaration by Howell, stating that he was out of the office on a preplanned vacation from June 26 to July 9, 2017, his office had miscalendared the date for filing the original objections, and he did not know until July 31, 2017, that the objections had not been timely filed.

³ In the reporter’s transcript, Yesenia’s counsel states that the 120-day limitations period for contesting the Trust had expired on June 18, 2017; however, that period expired on July 18, 2017, 120 days after the March 20, 2017 notice was sent. (§ 16061.7.)

Motions to strike

In response, Yesenia filed motions to strike appellants' original objection filed on July 31, 2017, and the supplemental objection filed on August 31, 2017. Yesenia argued that appellants' original and supplemental objections challenged the validity of the Trust and were therefore trust contests barred by the 120-day limitations period in section 16061.8. Yesenia further argued that the July 31, 2017 objection was unverified and untimely, and that appellants had failed to show good cause for the late filing.

Appellants opposed the motions to strike, arguing that the trust document attached to the April 3, 2017 petition was invalid, rendering the Trust itself invalid. Appellants also argued that under Code of Civil Procedure section 473, they should not be prejudiced by the late filing of their objection to the petition, which was the fault of their attorney Howell.

Order granting motions to strike

At the November 2, 2017 hearing on the motions to strike, appellants' attorney Howell requested relief under Code of Civil Procedure section 473. The trial court denied the request, noting that the statute did not apply because appellants had received notice of the 120-day limitations period for filing a trust contest and had failed to do so within that period. Howell responded that he was "unaware of" the statute of limitations, as he had never been provided a copy of the March 20, 2017 notice served on appellants pursuant to section 16061.7.

The trial court granted the motions to strike, concluding that both the objection and response appellants filed on July 31, 2017, and the supplemental objection and response filed on August 31, 2017, were trust contests barred by the 120-day

limitations period in section 16061.8. The trial court rejected appellants' request for relief under Code of Civil Procedure section 473, finding that they had not complied with the statutory requirements for relief and that any amendment could not cure the failure to timely file their objection.

After entry of the order granting the motions to strike, Yesenia filed and served, on January 5, 2018, a request for entry of default.

Code of Civil Procedure section 473 motion to set aside

On January 25, 2018, appellants filed a motion under Code of Civil Procedure section 473 to set aside the order granting the motions to strike. In support of their motion, appellants submitted a second declaration by Howell explaining why he had missed the July 10, 2017 court-ordered deadline for filing an objection to the section 850 petition. Appellants denied that their initial or supplemental objections were the equivalent of a trust contest, and argued that the failure to file a timely objection by July 10, 2017, was solely the fault of Howell.

Yesenia opposed the motion, arguing that relief under Code of Civil Procedure section 473 was not warranted, as the order granting the motions to strike was based on appellants' failure to timely contest the validity of the Trust within the 120-day statutory period, and that the motion for relief was an improper motion for reconsideration.

The trial court denied appellants' motion, finding that it was "an improper motion for reconsideration under Code of Civil Procedure section 1008" that presented no new facts or law not considered at the November 2, 2017 hearing on the motions to strike. The trial court further found that the November 2, 2017 order granting the motions to strike "was a ruling on the merits

and was not the result of mistake, inadvertence, surprise or excusable neglect.”

Yesenia and her attorney submitted declarations in support of default judgment. Appellants filed evidentiary objections to those declarations and appeared at the March 13, 2018 default prove-up hearing. After taking the matter under submission, the trial court ordered that the grant deeds purporting to transfer the Pomona property from the Trust to Jose were void ab initio because of Celia’s lack of capacity; that Jose has no title or right to possession of the Pomona property; and that title and right to possession of the Pomona property is vested in the trustee, on behalf of the Trust. Yesenia requested and was awarded attorney fees and costs under Welfare and Institutions Code section 15657.5.

Judgment was entered in Yesenia’s favor on June 1, 2018. This appeal followed.

DISCUSSION

Code of Civil Procedure section 473 accords a court discretion to relieve a party from “a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473, subd. (b).) The statute does not provide relief, however, from “errors that result in the running of the applicable statute of limitations. [Citations.]” (*Life Savings Bank v. Wilhelm* (2000) 84 Cal.App.4th 174, 177.)

Section 16061.7 requires the trustee of a revocable trust that becomes irrevocable upon the settlor’s death to serve a written notice on the trust beneficiaries advising them that they may not bring an action to contest the trust more than 120 days

from the date of the notice.⁴ Section 16061.8 precludes a person on whom notice is served pursuant to section 16061.7 from bringing an action to contest the trust more than 120 days after the date of service. The statute provides in part: “No person upon whom the notification by the trustee is served pursuant to this chapter . . . may bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the date on which a copy of the terms of the trust is delivered pursuant to Section 1215 to him or her during that 120-day period, whichever is later.” (§ 16061.8.)

The record shows that Yesenia served appellants by certified mail with a notice pursuant to section 16061.7 on March 20, 2017. Appellants had until July 18, 2017, in which to file a contest to the Trust. (§ 16061.8.) Their failure to do so was the basis for the trial court’s order granting the motions to strike the objection and response appellants filed on July 31, 2017, and their supplemental objection and response filed on August 31, 2017.

Appellants fail to address the statute of limitations issue in their opening brief on appeal. Although appellants belatedly attempt to do so in their reply brief, we decline to consider arguments not raised in their opening brief. The rule is this: “A

⁴ The notice required by section 16061.7 must state as follows: “You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the date on which a copy of the terms of the trust is delivered to you during that 120-day period, whichever is later.” (§ 16061.7, subd. (h).)

point not presented in a party's opening brief is deemed to have been abandoned or waived. [Citations.] [Citation.]” (*Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1754, fn. 1.) Appellants accordingly fail to establish any error in the trial court's November 2, 2017 order granting the motions to strike.

Appellants also fail to establish any error in the order denying their motion, under Code of Civil Procedure section 473, to set aside the November 2, 2017 order granting the motions to strike. The record shows that the trial court considered and rejected appellants' claim of a right to relief under Code of Civil Procedure section 473 when it granted the motions to strike. Motions for relief under Code of Civil Procedure section 473 are subject to the requirements of Code of Civil Procedure section 1008. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 833.) Those requirements include submitting an affidavit in support of the motion, identifying “what new or different facts, circumstances, or law are claimed to be shown.” (Code Civ. Proc., § 1008, subd. (a).) No such affidavit accompanied appellants' moving papers. The trial court did not err by denying appellants' motion under Code of Civil Procedure section 473 as an improper motion for reconsideration.

DISPOSITION

The judgment is affirmed. Respondent is awarded her costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST