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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TOBY DOUGLAS, DIRECTOR OF THE
DEPARTMENT OF HEALTH CARE
SERVICES,

Plaintiff and Respondent,

v.

RICHARD FRANCISCO CASTILLO,

Defendant and Appellant.

B250210

(Los Angeles County
Super. Ct. No. BC484100)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joanne B. O'Donnell, Judge. Affirmed.

Morris & Morris A Law Corporation and John S. Morris for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Jennifer M. Kim, Supervising Deputy Attorney General, and Andrea F. Ventura, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Richard Castillo, Sr. (Castillo) acquired real property from his sister, Medi-Cal beneficiary Cecelia Galaviz Garcia (Decedent), upon her death in October 2009. Plaintiff Toby Douglas, in his capacity as Director of the Department of Health Care Services (DHCS), brought suit against Castillo pursuant to Welfare and Institutions Code,¹ section 14009.5 for reimbursement of expenditures on health care services that the state provided to decedent during her life. Castillo concedes that DHCS is entitled to recovery based on the value of the property he acquired; his appeal challenges only the trial court's admission of evidence concerning that value, its refusal to make certain deductions when determining the value, and its assessment of prejudgment interest. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts in this case are undisputed. Decedent died at age 86 on October 22, 2009. During the 22 years preceding her death, decedent received \$147,190.64 in Medi-Cal health care benefits. Decedent was not survived by a spouse or any children who were under age 21, blind, or disabled within the meaning of section 1614 of the federal Social Security Act at the time of her death. She was survived by her adult son, George Garcia (Garcia), and her brother, Castillo, with whom she held in joint tenancy real property located at 1396-1398 North Eastern Avenue, Los Angeles, California, 90063 (the property). The property was encumbered by a reverse mortgage

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

that decedent obtained shortly before her death. An appraiser hired by the mortgage lender valued the property at approximately \$260,000² on June 30, 2009.

Castillo admitted that he became the sole owner of the property following decedent's death by virtue of the joint tenancy. He also served as the executor of decedent's estate. Acting in that capacity, Castillo notified DHCS of decedent's death in January 2010. On April 14, 2010, DHCS sent Castillo a letter demanding reimbursement of \$157,352.09 in Medi-Cal expenses pursuant to section 14009.5, subdivision (a), which requires DHCS to "claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less." The letter stated that "interest may accrue at the legal rate" if the claim was not satisfied within 60 days.

After its letter went unanswered for nearly a year, DHCS followed up with a second demand letter dated February 7, 2011. DHCS sent a third demand letter on March 21, 2011, and a fourth on June 8, 2011. The June 8, 2011, letter indicated that "[i]nterest is accruing, on the unpaid principal, at the rate of 7.00%." On November 22, 2011, DHCS notified Castillo that it had revised its claim downward to \$147,190.64 and demanded payment of the lower sum. The letter also advised Castillo that the balance due with interest was \$163,730.09. After receiving no response, DHCS on May 7, 2012, brought suit against Castillo and Garcia³ to recover the lesser of the \$147,190.64 it was

² The property was appraised at \$260,750.00. The parties and trial court generally have acted as though the appraised value were \$260,000. We do the same for purposes of this appeal.

³ DHCS alleged in its complaint that Garcia received unspecified property from Decedent's estate. In a request for admission propounded during discovery, however, DHCS asked Garcia to admit that he "did not receive any property, real or personal, from DECEDENT'S ESTATE." The trial court deemed this assertion admitted. We accordingly ignore Garcia, who has not appealed, for purposes of this opinion,

owed or the value of the property they received from decedent's estate. (See § 14009.5, subd. (a); Cal. Code Regs., tit. 22, § 50961, subd. (a).)

The matter proceeded to a bench trial. Both sides waived a reporter. The appraiser who prepared the June 30, 2009, appraisal report did not testify, but the trial court admitted his written appraisal report into evidence over Castillo's objection. The trial court also admitted documentary evidence showing that the property sold for \$230,000 on September 28, 2010, nearly one year after decedent's death.⁴ The parties stipulated to the admission of "other Wells Fargo Reverse Mortgage related documents," among which were several documents indicating that the property had been appraised for \$260,000.

After considering the parties' evidence, arguments, and posttrial submissions, the trial court issued a tentative ruling in favor of DHCS in the amount of \$74,801.73, plus postjudgment interest. The calculation of that figure lies at the heart of this appeal, so we outline the trial court's analysis and calculations in some detail.

The trial court first determined that DHCS proved that it paid \$147,190.64 in health care expenses to decedent and that Castillo received property with a value less than that amount from decedent upon her death. Accordingly, the trial court concluded that DHCS was entitled to recover the value of the one-half interest in the property Castillo received from decedent pursuant to section 14009.5. To ascertain the value of that interest, the trial court looked to the Code of Regulations, which clarifies (1) that the "value of the property received by any recipient from the decedent" (§ 14009.5, subd. (a)), is the "decedent's equity interest in the property at the time of death (to the extent of

notwithstanding DHCS's suggestion that he testified to receiving \$7,500 in proceeds from the sale of the property.

⁴ At oral argument, the parties disputed whether Castillo also testified to the value of the property at the time of its sale. Because we do not have a reporter's transcript or a settled or agreed statement, we are unable to resolve the dispute. We proceed on the record that we do have, which indicates only that the trial court admitted documentary evidence of the sale price.

such interest)” (Cal. Code Regs., tit. 22, § 50961, subd. (a)(2)), and (2) that “[e]quity interest’ means the fair market value of the property to which the decedent held legal title or interest at the time of death (to the extent of such interest), less the amount owed in deeds of trust, mortgages, and liens on record at the time of death.” (*Id.* at § 50960.9.) Noting that the Code of Regulations pegs “fair market value” to the time of a decedent’s death as well, (see *id.* at § 50960.21), the trial court relied on the appraiser’s valuation of the property rather than the sale price because the former was made closer in time to decedent’s date of death. The trial court thus concluded that the property had a value of \$260,000 at decedent’s death.

From that starting point, the trial court determined that the value of the interest that passed to Castillo at decedent’s death by virtue of the joint tenancy was one-half of the property’s value, or \$130,000. The trial court subtracted from this amount one-half of the \$98,015.12 encumbrance that remained on the property at the time of decedent’s death (\$49,007.56), as well as \$16,631.12 representing outstanding property taxes that decedent owed. These calculations resulted in an “equity interest” of \$64,361.12. Castillo, relying on Probate Code, section 11420, and *Estate of Sharp v. San Diego Hospital Association* (1971) 18 Cal.App.3d 565, 583, requested that the trial court make further deductions to reflect the cost of repairs to the property and costs associated with the September 2010 sale. The trial court distinguished *Estate of Sharp* because it “concerned the distribution of assets pursuant to a will that required the sale of estate property,” whereas the trial court found that Castillo voluntarily incurred both expenses after he became the sole owner of the property. The trial court also rejected Castillo’s reliance on the Probate Code, reasoning that the property was not probated but rather passed to Castillo via the joint tenancy. The trial court consequently denied the requests for both deductions.

The trial court also found that Castillo received \$13,602.50 from a bank account that he shared with decedent. The trial court added this amount to its \$64,361.12 “equity interest” figure, arriving at \$77,963.82. The trial court granted Castillo’s request to

deduct \$4,347.00, the amount of a check that decedent had written on the bank account prior to her death, and also subtracted \$5,000 in funeral expenses to which DHCS voluntarily relinquished its claim. These calculations resulted in a judgment amount of \$68,616.82. The trial court determined that DHCS was entitled to recover prejudgment interest at a rate of 7 percent pursuant to Code of Regulations, title 22, section 50961, subdivision (l)(1), and assessed prejudgment interest in the amount of \$6,184.91. Adding the prejudgment interest to the \$68,616.82 judgment resulted in the trial court's final figure of \$74,801.73.

Before the trial court finalized its tentative ruling, DHCS filed a motion to correct a clerical error in the trial court's opinion: in calculating the prejudgment interest, the trial court stated that DHCS sent its amended demand letter on November 22, 2012, rather than the correct date of November 22, 2011. The trial court granted the motion and issued an amended ruling correcting the misstatement on May 1, 2013.⁵ The trial court issued a final judgment on May 28, 2013, directing Castillo and Garcia to "pay plaintiff \$74,801.73 plus post-judgment interest." DHCS filed and served a notice of entry of judgment on May 30, 2013.

Castillo timely filed the instant appeal on July 23, 2013. He contends that the trial court erred in (1) admitting and relying upon the June 30, 2009, appraisal of the property; (2) failing to deduct the cost of repairs to the property; (3) failing to deduct the costs associated with the sale of the property; and (4) adding interest to the amount recoverable by DHCS. Notably, he concedes that DHCS is entitled to reimbursement under section 14009.5, subdivision (a), and does not challenge the trial court's overall valuation methodology.

⁵ This was the only change the trial court made to its ruling. Castillo suggested in his reply brief and at oral argument that the trial court also revised its discussion of his evidentiary objections. It appears that Castillo predicated this assertion on the copy of the ruling provided with the Notice of Ruling, which omits the second page of the three-page ruling. We have relied on the complete version of the ruling.

DISCUSSION

A. *Admission of the Appraisal Report*

Castillo's primary contention is that the trial court erred in admitting the appraisal report into evidence. He argues both that the appraisal report was not a permitted method of establishing the value of a property under Evidence Code section 813 and that it was inadmissible hearsay. He asserts that we should review the trial court's evidentiary rulings de novo. DHCS, on the other hand, contends that Castillo is precluded from raising these evidentiary arguments because he did not include a reporter's transcript in the appellate record. DHCS further contends that even if Castillo's evidentiary arguments are ripe for consideration, the trial court did not abuse its discretion in admitting the appraisal report because Castillo stipulated to its admission.

DHCS is correct that Castillo's failure to include a reporter's transcript or other memorialization of the bench trial largely precludes us from evaluating his evidentiary arguments. The California Rules of Court, rule 8.120, subdivision (b), provides: "If an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings" Here, however, no record of the oral proceedings is included, whether by way of a reporter's transcript, agreed statement, or settled statement. The appeal thus is tantamount to one taken on the judgment roll (*Williams v. Inglewood Board of Realtors, Inc.* (1963) 219 Cal.App.2d 479, 482), and we must indulge every presumption in favor of the validity of the judgment, unless reversible error appears on the face of the record. (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924; *see also In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992 ["Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct* as to *all evidentiary matters*."].) Accordingly, we presume that the trial court's admission of the report was correct. (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564.)

Even if the trial court did err in admitting the appraisal report over his objection, however, Castillo has not demonstrated that the error would require reversal. “A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed by reason of the erroneous admission of evidence unless: (a) [t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion; and (b) [t]he court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground stated and that the error or errors complained of resulted in a miscarriage of justice.” (Evid. Code, § 353; *see also* Cal. Const., art. VI, § 13.)

The record does not make any mention of Evidence Code, section 813, on which Castillo heavily relies at this juncture. Our review of the record leaves us skeptical that any of the valuation evidence admitted (and relied on) by the trial court complied with the requirements of Evidence Code, section 813. However, in light of Castillo’s failure to apprise the trial court of any potential issue regarding Evidence Code, section 813, as well as the absence of authority suggesting that Evidence Code, section 813 supersedes Evidence Code, section 353, we cannot conclude that reversal is warranted based on the trial court’s admission and consideration of this evidence.

The incomplete record before us does suggest that Castillo properly interposed an objection on hearsay grounds, a suggestion that DHCS endorsed at oral argument. Castillo nonetheless cannot demonstrate that a miscarriage of justice resulted when the objection was overruled, whatever merit the objection may have had. The admission of improper evidence results in a miscarriage of justice only if “it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*Rappaport v. Gelfand* (2011) 197 Cal.App.4th 1213, 1229). That standard cannot be met here, as Castillo himself made an unqualified stipulation to the

admission of documents⁶ stating that the property was appraised for \$260,000 in June 2009, (see *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 398), and he has not challenged the trial court's conclusion that the value assessed nearest the decedent's date of death was the most probative of the property's value for purposes of section 14009.5, subdivision (a).

B. Deductions for Sale and Repair Expenses

Castillo next contends that the trial court committed legal error in refusing to deduct from its calculated "equity interest" the costs that he incurred in connection with repairing and ultimately selling the property. Castillo argues, without citation to the record or to any legal authority, that decedent's estate was contractually obligated under the reverse mortgage to use the mortgage proceeds to complete repairs on the property and he therefore did not receive those funds from decedent's estate. Castillo further asserts that Probate Code, section 11420 sets forth the order in which a decedent's debts are paid, and that debts related to the reverse mortgage (the repairs) and the administration of the estate (the sale (see *Estate of Sharp, supra*, 18 Cal.App.3d at p. 583)), have priority over any debts related to decedent's last illness. DHCS, which contends that the substantial evidence standard of review applies, urges us to affirm the trial court's rulings.

Although the substantial evidence standard of review applies to the ultimate factual question of the property's value, we review de novo challenges to the trial court's valuation methodology, its application of law, and its resolution of mixed questions of law. (*Elk Hills Power, LLC v. Board of Equalization* (2013) 57 Cal.4th 593, 606; *Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212.) We find no error under any standard.

⁶ According to Castillo, as well as a minute entry the trial court prepared during the trial, Castillo stipulated to the admission of Exhibit 21, which consisted of "other Wells Fargo Reverse Mortgage related documents," but not to Exhibit 20, which consisted of the appraisal report itself. However, Exhibit 21 contains several documents showing that the appraised value of the property as of June 30, 2009, was \$260,000.

Even if Castillo is correct that the priority hierarchy set forth in the Probate Code is applicable, he has not demonstrated that the trial court's ruling contravened it. Only those charges that are necessary and proper to preserve the estate "come under the head of expenses of administration." (*Estate of Sharp, supra*, 18 Cal.App.3d at pp. 580-581.) Here, the trial court correctly recognized that there was no estate for Castillo to preserve. "[T]he distinguishing characteristic of a joint tenancy is that each tenant has a right of survivorship, by which, upon the death of the other tenant, the survivor will automatically succeed to the entire property." (*Dang v. Smith* (2010) 190 Cal.App.4th 646, 660.) Moreover, Castillo admitted that he became the sole owner of the property as of the date of decedent's death. The estate had no interest in the property, so expenses associated with the property after decedent's death properly were chargeable to Castillo alone. *Estate of Sharp*, in which the court concluded that "[t]he costs of sale of the various parcels of property . . . were expenses of administration," is distinguishable because liquidation of the decedent's estate was necessary to facilitate testamentary distribution. (See *Estate of Sharp, supra*, 18 Cal.App.3d at p. 583.) Castillo has not demonstrated that there was a need to liquidate the estate here, or indeed any estate to liquidate. Likewise, Castillo has not pointed to anything in the appellate record supporting his assertion that the particular repairs at issue were required by the reverse mortgage or commenced during decedent's life.

C. *Assessment of Prejudgment Interest*

Castillo's final contention is that the trial court erred in awarding DHCS prejudgment interest on its claim. He concedes that DHCS may collect interest on unpaid claims in some instances, but argues that the assessment of interest was improper in this case because section 14009.5, subdivision (a), limits DHCS's recovery to the value of the property that he actually received from decedent. Castillo thus contends that section 14009.5, subdivision (a) permits DHCS to collect interest only on claims exceeding the corpus of a decedent's estate.

Our de novo review of this legal question reveals no error. (*Harustak v. Wilkins*, *supra*, 84 Cal.App.4th at p. 212.) Section 14009.5, subdivision (a) authorizes and obligates DHCS to “claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less.” Castillo argues that this language caps the total amount that DHCS ultimately may recover from a recipient of a decedent’s property at the value of the property that the person received (if less than the payments for health care services rendered), regardless of the recipient’s dalliance in complying with the reimbursement request. We find no support in the text for this contention. To the contrary, section 14009.5 is intended to “prevent[] the heirs of Medi-Cal recipients from unfairly benefitting from the program” (*Kizer v. Hanna* (1989) 48 Cal.3d 1, 6), and permitting a recipient of property to delay reimbursement with impunity merely because the value of Medi-Cal services rendered exceeds the value of the property Castillo acquired contravenes this aim.

Liability for prejudgment interest arises not from the acquisition of property but from the recipient’s failure to timely comply with his or her reimbursement obligation. (*Shewry v. Begil* (2005) 128 Cal.App.4th 639, 646.) Interest accrues only as to the unpaid portion of the reimbursement claim, (Cal. Code Regs., tit. 22, § 50961, subd. (1)(1)), and Castillo had the power to minimize or stop its accrual by promptly responding to DHCS’s demand letters. Castillo delayed in taking action, and, like all who are obligated to pay a sum certain, must pay interest as a result. (See Civil Code, § 3287; *Shewry v. Begil*, *supra*, at p. 646.)

DISPOSITION

The judgment of the trial court is affirmed. DHCS is awarded its costs on appeal.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.