

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(h). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JACK GOULDEN,

Plaintiff and Appellant,

v.

TERRY HINRICHER, as  
Trustee, etc.,

Defendant and Respondent.

2d Civil No. B282560  
(Super. Ct. No. 56-2012-  
00425329-PR-TR-OXN)  
(Ventura County)

Jack Goulden, a beneficiary of the Goulden Trust, made multiple attempts to set aside approvals of five accounts filed by the trustee, Terry Hinricher. He renews his challenge to these approvals on appeal. Because the appeal is not taken from an appealable order, we dismiss it.

**FACTUAL AND PROCEDURAL HISTORY**

Goulden filed a petition to compel an accounting (Prob. Code, § 17200, subds. (a) & (b)(6), (7)(c)). The parties settled the first account. The probate court filed an order approving the trustee's second account. Goulden filed documents

stating that he reviewed and approved the third, fourth, and fifth accounts.<sup>1</sup>

A year after he approved the third through fifth accounts, Goulden filed a petition to set aside the approvals of the first through fifth accounts based on extrinsic fraud. The petition was denied on February 8, 2017.

Goulden filed a motion to vacate the order denying the petition to set aside the approvals of the first through fifth accounts (Code Civ. Proc., § 473). The motion to vacate was denied on March 15, 2017.

### DISCUSSION

In probate matters, the only appealable orders are those listed in the Probate Code.<sup>2</sup> (Code Civ. Proc., § 904.1, subd. (a)(10); *Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1125-1126.) Appealable probate orders are set forth in sections 1300-1304. There is no right to appeal from orders not enumerated in these sections. (*Id.* at p. 1126.)

In his notice of appeal, Goulden specified that he appeals the “15 March, 2017” “Ruling to Set Aside Prior Filed Accounts.” The only order filed on that date was the order denying a motion to vacate the order denying the petition to set aside approvals of the trustee’s accounts. An order denying a motion to vacate under Code of Civil Procedure section 473 is not an appealable order under the Probate Code. (*In re Estate of*

---

<sup>1</sup> There are no formal orders approving the first, third, fourth, and fifth accounts.

<sup>2</sup> Further unspecified statutory references are to the Probate Code.

*O'Dea* (1940) 15 Cal.2d 637, 638 (*Estate of O'Dea*); *Kalenian v. Insen* (2014) 225 Cal.App.4th 569, 576 (*Kalenian*); §§ 1300-1304.)

To the extent that Goulden seeks to challenge the underlying order denying the petition to set aside approvals of the accounts, that order is not (1) properly identified in the notice of appeal, or (2) an appealable order.

The notice of appeal does not mention an order dated February 8, 2017, which is when the court denied the petition to set aside approvals of the accounts. “Care must be taken in drafting the notice of appeal to identify the order or judgment being appealed so as not to mislead or prejudice the respondent.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 967.) Our review is limited in scope to the judgment or order specified in the notice of appeal. (Cal. Rules of Court, rule 8.100; *Soldate v. Fidelity National Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073.)

Even if we construed the notice of appeal as taken from the February 8, 2017 order, that order is not appealable. (See *Guardianship of Jones* (1954) 128 Cal.App.2d 602, 605 [order denying the petition to set aside an order approving guardian’s account is not appealable].) There was no right to appeal from that order. (*Estate of O'Dea, supra*, 15 Cal.2d at p. 638.)

Goulden argues that this case presents an exception to the general rule that the denial of a motion to vacate or set aside is nonappealable, because there was no formal order approving the first, third, fourth, and fifth trust accounts. This argument lacks merit. Although the record is unclear on whether formal orders were filed, the record indicates that these accounts were approved. The parties settled the first account and Goulden filed documents stating that he reviewed and approved the third,

fourth, and fifth accounts. Significantly, Goulden acknowledges the court's approvals of these accounts since he petitioned to set them aside and appeals the denial of his petition. But if no orders of approval exist, the issue is irrelevant because the appeal is taken from nonexistent nonappealable orders.

Exceptions to the general rule of appealability apply only in limited circumstances, including where an order on a motion to vacate or set aside has the same legal effect as a specified appealable order (see *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 755; *Estate of Martin* (1999) 72 Cal.App.4th 1438, 1441-1443), or where an aggrieved party was never given an opportunity to participate in the trust litigation through no fault of their own (*Kalenian, supra*, 225 Cal.App.4th at pp. 576-577). Neither of these circumstances apply here.

#### **DISPOSTION**

The appeal is dismissed. Hinricher shall recover costs on appeal.

**NOT TO BE PUBLISHED.**

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Glen M. Reiser, Judge

Superior Court County of Ventura

---

Law Offices of Dawn T. Simon and Dawn T. Simon,  
for Plaintiff and Appellant.

Law Offices of David A. Esquibias, Sara J. McLemen  
and David Esquibias, for Defendant and Respondent.