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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Estate of TOKIE YORIE SAKAIDA,
Deceased.

NORMAN ISAMU SAKAIDA,

Petitioner and Respondent,

v.

HENRY H. SAKAIDA,

Objector and Appellant.

B277158
(c/w B279834)

(Los Angeles County
Super. Ct. No. BP110277)

APPEAL from an order of the Superior Court of
Los Angeles County. Maria E. Stratton, Judge. Reversed.

Rutan & Tucker, David H. Hochner and Gerard M. Mooney
for Objector and Appellant.

O'Neill Huxtable & Abelson and Mary L. O'Neill for
Petitioner and Respondent.

In this second appeal before us, two brothers are still fighting over their parents' estate. This time, Henry H. Sakaida (Henry) appeals from the trial's court order granting the petition of his brother Norman Ismau Sakaida (Norman) to compel Henry to provide an accounting for the period of time Henry served as trustee of the Sakaida Family Trust (the trust), 2004 through 2008. Without addressing all of the contentions Henry raises on appeal, we agree with Henry that Norman lacks standing to seek such an accounting by a former trustee of a revocable trust. We therefore reverse the trial court's order compelling Henry to provide an accounting.

FACTUAL AND PROCEDURAL BACKGROUND

The Family and Family Business

John Takashi Sakaida (John) and Tokie Yorie Sakaida (Tokie) were married for almost 50 years. John had three sons from a prior marriage: Norman, Henry and Richard Teruo Sakaida (Richard). Tokie raised the boys as her own; she had no other children. John and Tokie had a nursery business; Henry worked in this business as his career for nearly 30 years.

The Estate Plan

John and Tokie's estate plan consisted of an inter vivos trust and pourover wills, which were restated and amended in 1992, so that their entire estate would pass solely to Henry. John died in October 2004. Upon John's death, the trust was divided into two subtrusts—the survivor's trust (Trust A) and the residuary trust (Trust B). Trust B became irrevocable upon John's death and Henry was the sole beneficiary.

In May 2006, Tokie executed a new will that left 50 percent of Trust A to Norman and 50 percent to Richard. In August 2006,

the trial court appointed Dr. Vida Negrete, a professional fiduciary, as Tokie's conservator.

Tokie died in August 2010. After her death, Henry brought a will contest, alleging that Tokie's 2006 will was invalid as a result of undue influence and lack of testamentary capacity. The trial court denied the contest and admitted the will to probate. Henry appealed, and we affirmed in *Estate of Tokie Yorie Sakaida* (Jan. 13, 2015, B249115) [nonpub. opn.], finding substantial evidence supported the trial court's findings that Tokie had testamentary capacity and that her 2006 will was not procured by undue influence.

Henry's Tenure

Henry became trustee of the trust on May 12, 2004, after John resigned due to health reasons. In 2007, Henry hired James D. Cashion, a certified public accountant, to prepare an accounting of the trust. Mr. Cashion prepared two accountings in 2008, covering the periods of May 2004 through June 2008 (the CPA accountings). The CPA accountings consisted only of cash accountings showing income and expenses.

Henry resigned as trustee on February 22, 2008. Dr. Negrete agreed to take over as trustee. On September 2, 2008, the trial court appointed Dr. Negrete as trustee.

The CPA accountings were delivered to Dr. Negrete and her counsel, who both reviewed them and had no concerns. The accountings were not given to Norman or Richard. Dr. Negrete also acknowledged receiving the trust's assets and files from Henry, including an allocation of assets between Trust A and Trust B, which she never reallocated.

Dr. Negrete's Accountings and Distributions

Dr. Negrete filed five separate accountings for the trust, which covered the period of September 2, 2008, through June 30, 2015. Neither Norman, Richard nor Henry filed any objections to the accountings, and the trial court approved each accounting.

With the permission of Norman, Richard and the trial court, Dr. Negrete distributed Trust B to Henry in 2011. The trial court discharged Dr. Negrete as trustee of Trust B on March 7, 2012.

By June 30, 2015, Dr. Negrete had distributed all of Trust A to Norman and Richard. On July 2, 2015, the trial court discharged Dr. Negrete as trustee of Trust A.

Conversations Between Counsel

On December 16, 2013, while Henry's first appeal was pending, Norman's counsel requested that Henry account for his tenure as trustee, which had ended five years earlier in 2008. Henry's counsel responded (over the course of several letters and e-mails between December 2013 and April 2014) that the request was premature in light of the appeal and that Henry would voluntarily prepare an accounting within 60 days after the appeal was complete if Norman prevailed. After we issued our opinion in favor of Norman, his counsel renewed the request. Henry's counsel responded that Henry reserved all of his rights, including the right to assert that Norman had waived the right to a request, and provided the CPA accountings. Norman's counsel requested further information.

The Petition

On May 6, 2015, Norman filed a petition to compel Henry to provide an accounting of his tenure as trustee. The matter proceeded to bench trial and was tried on stipulated facts,

declarations, and Henry’s live testimony. The trial court granted the petition and ordered Henry to provide an accounting, finding that “Henry’s prior agreements, through counsel, to provide an accounting estop him from objecting to what he agreed to do.” This appeal followed.¹

DISCUSSION

Henry raises at least five challenges to the trial court’s order requiring him to provide an accounting during his tenure as trustee of the trust from 2004 to 2008. We do not address each of these contentions, however, because we agree with Henry that Norman lacks standing to seek such an accounting. (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn. 1 [We review a trial court’s ruling, not its rationale].)

To begin, Norman’s petition for an accounting does not distinguish between Trust A and Trust B.

¹ Henry actually filed two notices of appeal—one from the trial court’s minute order dated July 1, 2016, and one from the court’s subsequent order on December 12, 2016, referring to the July 1, 2016 minute order.

While an order compelling a trustee to submit an accounting is generally not appealable (Prob. Code, § 1304, subd. (a)(1)), such an order is appealable where, as here, “it expressly or implicitly decides other issues that could be the subject of an appealable probate order,” including “the existence of a power, duty, or right under a trust.” (*Esslinger v. Cummins* (2006) 144 Cal.App.4th 517, 522, 523 [order for accounting appealable because it implicitly decided remainder beneficiary had right to seek an accounting].)

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

With respect to Trust B, Norman has never had standing to obtain an accounting of Trust B. Only “a trustee or beneficiary of a trust may petition the court” to compel a trustee to account. (§ 17200, subd. (a).) “As it relates to a trust,” a “beneficiary” is “a person who has any present or future interest, vested or contingent” in the trust. (§ 24, subd. (c).) Norman has never had any interest—present, future, vested or contingent—in Trust B. At all times, Henry was the only beneficiary of Trust B. Thus, as the parties stipulated at trial, Henry was the sole beneficiary of Trust B in 2004 when John died and Trust B became irrevocable. Because Norman was never a beneficiary of Trust B, he is not entitled to an accounting of Trust B for any period of time.

With respect to Trust A, of which Norman was a 50 percent remainder beneficiary, we also conclude that Norman is not entitled to the accounting he seeks.

It is well established that a trustee has no obligation to account to a beneficiary during the time the trust is revocable. Section 16069 states that a “trustee is not required to account to the beneficiary . . . [i]n the case of a beneficiary of a revocable trust, as provided in Section 15800, for the period when the trust may be revoked.” (§ 16069, subd. (a).) Section 15800 states “during the time that a trust is revocable and the person holding the power to revoke the trust is competent: [¶] (a) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under this division. [¶] (b) The duties of the trustee are owed to the person holding the power to revoke.” (§ 15800.) This is so because property transferred into a revocable *intervivos* trust is considered the settlor’s property during his or her lifetime. Thus, so long as the settlor is alive and competent, he or she may dispose entirely of the property

without explanation or justification and thereby divest the beneficiaries of any interest in the trust. (*Estate of Giralдин* (2012) 55 Cal.4th 1058, 1065, 1066 (*Giralдин*) [“so long as the settlor is alive, the trustee owes a duty solely to the settlor”].)

As explained in *Evangelho v. Presoto* (1998) 67 Cal.App.4th 615, the effect of sections 15800 and 16069 is “to postpone the enjoyment of rights under the trust law by contingent beneficiaries while the settlor could revoke or modify the trust. During the time the person holding the power to revoke is competent or alive, a trustee has no duty to account to contingent beneficiaries for the period when the trust may be revoked. When the person holding the power to revoke dies, the rights of the contingent beneficiaries are no longer contingent. Those rights, which were postponed while the holder of the power to revoke was alive, mature into present and enforceable rights under division 9, the trust law.” (*Evangelho v. Presoto, supra*, at pp. 623–624; see also § 16062, subd. (a) [requiring that accountings be provided to beneficiaries to whom “income or principal is required . . . to be *currently* distributed” (Italics added.)]; *Babbitt v. Superior Court* (2016) 246 Cal.App.4th 1135, 1141 (*Babbitt*) [“Section 16062 sets forth a trustee’s obligation to account on a regular basis, but provides that contingent or remainder beneficiaries . . . are not entitled to an accounting”]; *Esslinger v. Cummins, supra*, 144 Cal.App.4th at 526 [“A remainder beneficiary does not have a right to an accounting under Probate Code section 16062”].)

Accordingly, while Tokie as the settlor was still alive and competent (and thereafter through her conservator), she retained the power to revoke the trust, and a trustee owed no duty to anyone besides her. Upon Tokie’s death in August 2010, Trust A

became irrevocable and Norman's rights vested in Trust A. Norman was then entitled, *as a current beneficiary*, to seek an accounting of Trust A from its then-trustee, Dr. Negrete, who in fact filed five separate accountings from 2008 onward, none of which Norman objected to. However, prior to Tokie's death in 2010, Norman was a remainder or contingent beneficiary of a revocable trust for the last years of Henry's tenure as trustee (May 2006 to Sept. 2008),² and thus Norman did not have standing to compel Henry to account during this time frame. Because "the trustee owes no duty to the beneficiaries while the settlor is alive and competent, . . . this lack of a duty does not retroactively change after the settlor dies." (*Giraldin, supra*, 55 Cal.4th at p. 1071.)

Babbitt, supra, 246 Cal.App.4th 1135 is instructive. In *Babbitt*, two spouses were the sole settlers and cotrustees of their trust. The husband's daughter from another marriage petitioned for an accounting from her stepmother after her father died and his portion of the trust became irrevocable. The trial court granted the petition, but the reviewing court reversed that portion of the order requiring the stepmother to account for trust assets during the time before her husband died. (*Id.* at p. 1143.) The *Babbitt* court held: "Although the beneficiaries of the irrevocable trust have standing to petition the probate court for an accounting and information after the settlor dies and the trust or a portion of the trust becomes irrevocable, the probate court

² For the first years of Henry's tenure as trustee (2004 to May 2006), Norman was not a beneficiary at all (Tokie did not name him as a beneficiary until she amended her will in May 2006), and therefore Norman had no standing at all to seek an accounting for this time frame.

does not have authority to order the trustee to provide an accounting or information regarding trust assets and transactions while the trust was still revocable, where, as here, there is no claim that the deceased settlor was incapacitated or subject to undue influence during the period of revocability.” (*Id.* at p. 1139.)

The petitioner in *Babbitt* had not alleged that her father was “incapacitated, incompetent, or subject to undue influence before his death,” she had not asserted a claim against her stepmother on her father’s behalf “for breach of fiduciary duty, fraud, or other misconduct as a cotrustee of the trust before [his] death,” and she had not alleged that her stepmother had “breached any fiduciary duty owed to the beneficiaries after [her father’s] death.” (*Babbitt, supra*, 246 Cal.App.4th at pp. 1142–1143, fn. omitted.) *Babbitt* reasoned that in the absence of such allegations “nothing that an accounting of such assets after his death might reveal could support a claim for breach of trust based on actions that occurred before his death. Thus, the probate court erred by compelling [the stepmother] to account for trust assets while the trust was revocable.” (*Id.* at p. 1146.)

In reaching its conclusion, *Babbitt* discussed *Giraldin, supra*, 55 Cal.4th 1058, on which Norman likewise relies. In *Giraldin*, a majority of our Supreme Court held that when the trustee is someone other than the settlor, “after the settlor’s death, the beneficiaries have standing to assert a breach of the fiduciary duty the trustee owed to the settlor to the extent that breach harmed the beneficiaries.” (*Id.* at p. 1076.) This standing would presumably give the beneficiaries the right to demand an accounting and information from the trustee regarding trust assets and transactions during the time period before the trust

became irrevocable. (See *Babbitt*, *supra*, 246 Cal.App.4th at p. 1138, discussing *Giraldin*.) But in reaching its holding, a majority of the *Giraldin* court emphasized it was only because the settlor was no longer alive to protect his interests that the beneficiaries had claims for “a violation of the trustee’s duty *to the settlor* to the extent that violation harmed the beneficiaries’ interests.” (*Giraldin*, *supra*, 55 Cal.4th at p. 1071.)

Here, Norman’s petition for an accounting did not allege a breach of fiduciary duty owed by Henry to Tokie. The petition also did not allege undue influence, lack of capacity, or lack of approval or ratification, nor could it in light of our prior opinion affirming the findings that Tokie had testamentary capacity and was not under undue influence when she executed her new will in May 2006. No such allegations could be made after this time frame either since Dr. Negrete was appointed conservator for Tokie in August 2006.

Norman’s petition alleged that the CPA accountings provided by Henry to Dr. Negrete when she replaced Henry as trustee “were not proper accountings in that they were simply accountings of the income and expenses without any beginning or ending balances and no inventory of assets.” But Norman presented no evidence that Tokie ever requested an accounting from Henry prior to Dr. Negrete being appointed as Tokie’s conservator. And the parties stipulated that Dr. Negrete and her counsel reviewed the accountings and Dr. Negrete “found everything to be in order” and her counsel “did not recall seeing anything in the accountings that was problematic or that caused her to have concerns about the accountings.” “Under the Probate Code, the legal rights of a conservatee—including the right to revoke a trust—pass to the conservator, under the close scrutiny

of the superior court.” (*Johnson v. Kotyck* (1999) 76 Cal.App.4th 83, 87.)

Simply put, there is no allegation of any breach by Henry toward Tokie to be remedied by Norman’s petition for an accounting. Accordingly, Norman lacks standing to petition for an accounting by Henry and the trial court erred in ordering him to submit one.

DISPOSITION

The order granting Norman’s petition to compel an accounting by Henry is reversed. Henry is entitled to his costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT