Filed 1/4/13 Jackson v. Branca CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MOCIENNE PETIT JACKSON, Plaintiff and Appellant, v. JOHN BRANCA et al., as Co-executors, etc., Defendants and Respondents.	B236845 (Los Angeles County Super. Ct. No. BF042442)

APPEAL from an order of the Superior Court of Los Angeles County, James D. Endman, Judge. Affirmed.

Mocienne Petit Jackson, in pro. per., for Plaintiff and Appellant.

Kinsella Weitzman Iser Kump & Aldisert, Howard L. Weitzman, and Laura D. Castner for Defendants and Respondents.

Appellant Mocienne Petit Jackson appeals from an order dismissing her petition for determination of paternity and genetic testing. Finding no error, we affirm.

BACKGROUND

Appellant claims to be the biological daughter of the late Michael Jackson[1] and Barbara Ross-Lee, the sister of Diana Ross. Appellant contends that because Jackson is no longer alive and Ross-Lee "is lying and hiding the tru[th]," genetic testing (presumably of Jackson's relatives) must be "done [to] establish[] paternity and biological relations."

Appellant claims that after being kidnapped from Haiti at a young age, she was adopted by members of the "mafia" in the Netherlands. Because the adoption was terminated at age 13, she has "no mother and no father" and "no family history."

In June 2011, appellant filed the present family court petition for determination of paternity and genetic testing (petition). The sole participants at the October 3, 2011 hearing on the petition were appellant, who was in pro. per., and Attorney Alan Watenmaker, who specially appeared on behalf of the executors of Jackson's estate, respondents John Branca and John McClain.[2]

At the October 3 hearing, the court stated that because Jackson was deceased, it had no jurisdiction to require his relatives to undergo genetic testing and the matter belonged in the probate court. Watenmaker explained that appellant had requested genetic testing of Jackson's relatives in the probate court, but that her request had been denied. Appellant did not dispute Watenmaker's statement.

---

[1] Jackson died on June 25, 2009.

[2] It appears that Ross-Lee was never served in this action and appellant does not contend otherwise.

The court dismissed the petition, stating: "The case is dismissed, court does not have jurisdiction to hear the matter." Appellant timely appealed from the order of dismissal.

DISCUSSION

In an appeal from an order of dismissal based upon a lack of subject matter jurisdiction, we review the issue de novo. (*Robbins v. Foothill Nissan* (1994) 22 Cal.App.4th 1769, 1773-1774.) We also presume in favor of the order that the record is devoid of any evidence that would support a finding of error. "'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . .' [Citations.]" (*Denham* v. *Superior Court* (1970) 2 Cal.3d 557, 564; see *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [the appellant must provide an adequate record demonstrating error in order to overcome the presumption on appeal that the order is correct].)

William M. v. Superior Court (1990) 225 Cal.App.3d 447 (*William M.*) is instructive because it similarly involved a paternity action that was initiated solely for blood testing purposes after the child's putative father had died. The petition in that case was filed by the child's (Matthew) natural mother (Dana) against the late putative father's (Michael) parents (the putative grandparents). As in this case, the statutory presumptions regarding paternity did not apply because "[Dana] and Michael were never married and Matthew was never legitimated by Michael." (*Id.* at p. 449.) After the family court granted Dana's request to require blood testing of the putative grandparents, the putative grandparents petitioned the appellate court for a writ of mandate. The appellate court overturned the order granting the request for blood testing, stating that the order was invalid because "putative grandparents [are not] susceptible to suit as defendants in a paternity action." (*Id.* at p. 453.) It also vacated the order overruling the putative

grandparents' demurrer to the petition and directed that the demurrer be sustained without leave to amend. (*Id.* at pp. 453-454.)

According to *William M.*, California law does not allow a paternity action to be filed against a deceased putative father's relatives in order to force them to undergo blood testing. As the court in *William M.* explained: "The repercussions of allowing putative grandparents to be sued in a paternity action and ordered to submit to blood tests extend far beyond the instant case. If Michael had no living parents, we might well be addressing identical issues involving Michael's brothers and sisters, cousins or other relatives. Given these troubling implications the decision of who may properly be made a party defendant in a paternity action subject to mandatory blood testing is one for the Legislature. Under existing laws, defendants are not proper parties to a paternity action and, a fortiori, cannot be ordered to submit to blood tests to aid in a determination of paternity." (225 Cal.App.3d at p. 453, fns. omitted.)

The same reasoning applies equally to this case. In order for appellant to establish the existence of reversible error, she must show that *William M.* is inapplicable to this case. Because appellant's opening brief does not mention *William M.* or provide any basis to distinguish it from this case, she has failed to overcome the controlling presumption on appeal that the order is correct. (*Denham* v. *Superior Court*, *supra*, 2 Cal.3d at p. 564.) We therefore conclude that the matter was properly dismissed for lack of subject matter jurisdiction.

DISPOSITION

The order of dismissal is affirmed. Respondents Branca and McClain are to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.