Filed 8/14/12 Estate of George 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| ESTATE OF ODIS GEORGE,<br>Deceased. | B236289<br>(Los Angeles County<br>Super. Ct. No. NP014516) |
| DONNIE O. TURNER,<br><br>Petitioner and Appellant,<br><br>v.<br><br>JESSIE F. WILSON,<br><br>Objector and Respondent. | |

APPEAL from an order of the Superior Court of Los Angeles County. Roy L. Paul, Judge. Affirmed.

Donnie O. Turner, in pro. per., for Petitioner and Appellant.

Jessie F. Wilson, in pro. per., for Objector and Respondent.

Appellant Donnie O. Turner appeals the decision of the probate court denying his petition to administer the estate of Odis George. Finding no error, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Odis George died in 2007. At the time of his death, he and his wife, Flossie George, owned a home in Long Beach.[1] After Odis's death, appellant rented the couple's house from Flossie. Appellant paid rent first to Flossie and then to respondent Jessie F. Wilson, Flossie's sister-in-law. In May 2011, appellant was evicted by respondent in an unlawful detainer action.

On July 11, 2011, a few months after the eviction and four years after Odis's death, appellant filed the underlying petition for letters of special administration in the probate court, seeking to become the administrator of Odis's estate. Appellant claimed to be a "nephew, by marriage" of Flossie, but asserted no relationship to Odis.[2] Respondent, who was Odis's sister and had been given a general power of attorney by Flossie, opposed the petition.[3] Respondent contended there was no significant property subject to probate as the couple's home had passed by joint tenancy to Flossie and was thereafter deeded to respondent, and that appellant

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[1] Because they share a surname, Odis and Flossie will be referred to by their first names in order to avoid confusion.

[2] Respondent contends in her brief that appellant fathered a child with respondent's daughter (Odis's niece), but has no other relationship to the family.

[3] Flossie was in her 90's and residing in a nursing home at the time of the underlying proceeding.

lacked standing.[4] At the hearing, respondent presented the fully executed power of attorney to the court and the pertinent deeds.[5]

The probate court denied the petition. At the hearing on the matter, the court explained to appellant: "[The law] says if you are not a relative, then I appoint the public administrator. That is a governmental person. That way we don't have strangers coming in and running other people's lives." The court's tentative decision was to refer the matter to a public administrator.[6] After respondent established that the house had been deeded to her by Flossie, the court determined that there was no property to probate and denied the petition outright.

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[4] Odis had one child, a son -- Charles George -- who predeceased Odis. Charles, who was not Flossie's son, was survived by four children. Appellant professes concern for the rights of Charles's children, but does not contend -- and presented no evidence -- that he was authorized to speak for them or represent them in connection with the estate.

[5] Although the documents presented to the probate court are not in our record, respondent asserts in her brief that following Odis's death, the home passed by virtue of joint tenancy to Flossie. Respondent further states that Flossie deeded the house to her and respondent's son, Kenneth Wilson, and that Kenneth subsequently deeded his share in the house to respondent, placing title solely with respondent at the time of the underlying litigation. This accords with the statements made on the record at the hearing.

[6] Probate Code section 8461 lists in order of priority the persons entitled to appointment as administrators of the estates of those who die intestate. The highest statutory priority is assigned to spouses, children and grandchildren, followed by certain other relatives. The "[p]ublic administrator" is 16th on the list and ahead of "Any other person," the sole category into which appellant might conceivably fall. (Probate Code, § 8461, subds. (p), (r).) If an administrator had to be appointed, the parties with statutory priority over appellant -- in this case both respondent and the public administrator -- had the absolute right to be appointed ahead of him. (See *Estate of Lewis* (2010) 184 Cal.App.4th 507, 511-514 [law accords absolute right to appointment to a person with statutory priority].) "The purpose of the provision for priority is to 'plac[e the administration of the estate] in the hands of persons most likely to manage the estate property to the best advantage of those beneficially interested.'" (*Estate of Garrett* (2008) 159 Cal.App.4th 831, 836.)

## DISCUSSION

Appellant contends that the court's decision denied him equal protection, due process of law, or some other constitutional right based on his race or color. His brief cites nothing to suggest that the court was biased or made any determination that was not in accordance with the pertinent governing law.[7]

It is well settled that "[a] probate proceeding is concerned with the administration of an estate, and, if there is no property, there is nothing to administer." (14 Witkin, Summary of Cal. Law (10th ed. 2005) Wills and Probate, § 352, p. 442.) Proof of the existence of property to be administered is a prerequisite to the probate court's assertion of jurisdiction. (See *Estate of Waits* (1944) 23 Cal.2d 676, 679; *Estate of Daughaday* (1914) 168 Cal. 63, 69; *Hecht v. Superior Court* (1993) 16 Cal.App.4th 836, 850; *Estate of Helm* (1935) 6 Cal.App.2d 752, 755.) Respondent established to the satisfaction of the court that the only significant piece of property owned by Odis -- the home jointly owned by Flossie and rented to appellant -- had passed to Flossie outside of probate and had been deeded to respondent.

Appellant contends that the court erred in interviewing respondent and reviewing her documents at the hearing. Probate Code section 8005 permits the court "[a]t the hearing on the petition [for administration of the estate]," to "examine . . . a witness concerning . . . [t]he character and value of the decedent's property."

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[7] Appellant further contends that he was "denied his constitutional right[] to appeal the [j]udgment" in the unlawful detainer action. Resolution of issues pertaining to the unlawful detainer action required a separate and timely appeal from the judgment in that matter and cannot be resolved in this appeal from the probate court's denial of appellant's petition for letters of special administration.

Appellant asserted in his petition, and contends in his reply brief, that the home was not Odis's sole significant asset. He asserted below that Odis left personal property valued at $100,000, but presented no evidence to support the contention. A prima facie showing that assets subject to probate exist is required to support a petition for administration of an estate. (*Estate of Daughaday*, *supra*, 168 Cal. at p. 71; *Estate of Helm*, *supra*, 6 Cal.App.2d at p. 755.) Appellant's bare representation was insufficient to support a prima facie case that Odis owned any significant personal property. As respondent established to the satisfaction of the court that Odis's home had passed to Flossie outside of probate, the probate court properly concluded there was no property to administer. Denial of the petition was mandated by the applicable law.

**DISPOSITION**

The order is affirmed. Respondent is awarded costs on Appeal.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.