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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SABINE KANEKO, as Executor, etc.,

Plaintiff and Respondent,

v.

TOSHIO MASUI,

Defendant and Appellant.

B275389

(Los Angeles County  
Super. Ct. No. SC025245)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Law Offices of Robert W. Cohen and Robert W. Cohen for Defendant and Appellant.

Sabine Kaneko, in pro. per.; Friedman & Friedman, Ira M. Friedman and Gail S. Green; Law Offices of Edward A. Hoffman and Edward A. Hoffman for Plaintiff and Respondent.

After plaintiff and respondent Sabine Kaneko (plaintiff) renewed a nearly 20-year-old judgment obtained by her deceased mother against defendant and appellant Toshio Masui (defendant), defendant moved to vacate the renewal on the ground that the judgment had expired and plaintiff lacked standing to renew it. The trial court denied defendant's motion, concluding plaintiff's renewal did not run afoul of applicable provisions in the Code of Civil Procedure. We consider whether the trial court's ruling was correct.

## I. BACKGROUND

### A. *The Judgment Obtained Against Defendant and Its Renewal*

In July 1993, several months after plaintiff filed for divorce from defendant, Erika Kaneko (Erika),<sup>1</sup> plaintiff's mother, sued defendant to recover money she had loaned him. As amended, Erika's complaint alleged she loaned defendant \$229,407 to invest in real estate, defendant did not use the money as pledged, and he failed to repay her as promised.

On March 25, 1996, Erika obtained a default judgment against defendant, who had by that point moved from California to Japan. The judgment consisted of compensatory damages in the amount of \$229,407, punitive damages of \$250,000, interest then totaling \$160,620.95, and \$308 in costs. Almost 10 years later, on March 20, 2006, Erika applied to renew the judgment, which she had not yet enforced.

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<sup>1</sup> We refer to Erika by her first name to avoid confusion with plaintiff.

Erika later died in May 2014. Her will included a specific provision referencing the judgment she obtained against defendant, which reads as follows: “If I am able to obtain an Enforcement Judgment in Case No. SC 025 245, *Kaneko v. Masui*, Superior Court for the State of California, I give the judgment proceeds, less all attorney’s fees and costs, to SABINE KANEKO [i.e., plaintiff].” Erika also nominated plaintiff to act as her executor.

On September 10, 2015, plaintiff applied to again renew Erika’s judgment against defendant. Plaintiff identified herself as Erika’s successor in interest and attached a copy of Erika’s will to the renewal application. Plaintiff’s application was granted the same day it was filed via a Notice of Renewal of Judgment form signed by the clerk of the superior court. Later, Erika’s will was admitted to probate, and the probate court appointed plaintiff executor of Erika’s estate.

*B. Defendant’s Motion to Vacate the Judgment*

In October 2015, defendant moved to vacate the judgment renewal issued by the court clerk on three grounds. First, he contended the 2015 renewal was invalid because Erika never served him with notice of the 2006 renewal of the judgment, or filed proof of such service with the court. Second, defendant contended plaintiff in any event lacked standing to renew Erika’s judgment in 2015 because at the time plaintiff applied for renewal, there was insufficient evidence she was Erika’s successor in interest. Third, defendant argued that even if there was a legal basis on which plaintiff could be considered Erika’s successor in interest, plaintiff still lacked standing to renew the judgment because she had not complied with the procedural

requirements set forth in Code of Civil Procedure sections 377.31 and 377.32<sup>2</sup> that would permit her to stand in Erika's place as the real party in interest.<sup>3</sup>

Plaintiff opposed the motion to vacate. In a declaration, she said she accompanied Erika on March 20, 2006, when Erika applied to renew the judgment and, on the same day, watched a notary mail the notice of renewal to defendant and the proof of service forms to the court. To prove defendant knew the judgment had been renewed in 2006, plaintiff also submitted evidence defendant sought to settle Erika's claim against him in 2007 (in the form of a letter from defendant's attorney that presented a proposal to settle, among other matters, the judgment against defendant in this case). With respect to her renewal of the judgment in 2015, plaintiff contended Erika's will adequately demonstrated she was Erika's successor in interest and therefore had standing to renew.

After a hearing, the trial court denied defendant's motion to vacate the renewal of the judgment. The court interpreted

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<sup>2</sup> Undesignated statutory references that follow are to the Code of Civil Procedure.

<sup>3</sup> Section 377.31 states: "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." Section 377.32 provides that a "person who seeks to . . . continue a pending action or proceeding as the decedent's successor in interest" must execute and file an affidavit or declaration containing specified information in support of the affiant's right to be substituted for the decedent.

section 377.32 to apply only where a decedent's successor sought "to commence an action" or "to carry on the prosecution" of a "pending" action, neither of which were at issue with respect to plaintiff's renewal of the judgment. Thus, the relevant provision in the court's view was not section 377.32 but rather section 686.010, which provided that a judgment could be enforced by a successor in interest after the death of the judgment creditor. The trial court found plaintiff was Erika's successor in interest and denied defendant's motion to vacate the renewal of judgment via a minute order that states: "Defendant fails to show that CCP Section 377.32 applies to post-judgment proceedings."

## II. DISCUSSION

A money judgment expires after 10 years if it is not enforced. (§§ 337.5, subd. (b), 683.020.) The judgment creditor may extend the time to enforce the judgment, however, by filing an application to renew the judgment (or to renew a previously renewed judgment) before the applicable 10-year period elapses. (§§ 683.120, 683.130.) "The statutory renewal of judgment is an automatic, ministerial act accomplished by the clerk of the court . . . ." (*Goldman v. Simpson* (2008) 160 Cal.App.4th 255, 262 (*Goldman*); § 683.150, subd. (a) ["Upon the filing of the application, the court clerk shall enter the renewal of the judgment in the court records"].)

A trial court may vacate a renewed judgment "on any ground that would be a defense to an action on the judgment . . . ." (§ 683.170, subd. (a).) We review a court's denial of a motion to vacate for abuse of discretion. (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 199.) We consider the evidence in the light most favorable to the party that

obtained the judgment and will reverse only if the moving party shows by a preponderance of evidence he is entitled to relief under section 683.170. (*Ibid.*) To the extent our review requires us to interpret statutory provisions, we do so de novo, by determining the Legislature’s intent and according the words of the statute “their usual and ordinary meaning.’ [Citation.]” (*Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387.)

A. *Defendant Presents No Persuasive Reason to Reverse the Trial Court’s Denial of Defendant’s Motion*

1. *Failure to file proof that notice of the 2006 renewal of judgment was served on defendant does not affect the validity of the renewal*

The Code of Civil Procedure states a party who renews a judgment obtained against a defendant “shall serve a notice of renewal of the judgment on the [defendant].” (§ 683.160, subd. (a).) “Until proof of service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement proceedings be commenced to enforce the judgment, except to the extent that the judgment would be enforceable had it not been renewed.” (§ 683.160, subd. (b).) Section 683.160 accordingly does not render a judgment renewal invalid absent proper service, it simply prohibits efforts to enforce the judgment until such service is made.

Cognizant of the text of section 683.160, defendant contends plaintiff’s 2015 renewal of the judgment should be deemed an “enforcement measure[ ].” Of course, if that were so, section 683.160 would prohibit plaintiff from renewing the judgment because Erika did not file a proof of service indicating

she served defendant with notice the judgment had been renewed in 2006. As we explain, however, defendant's premise is faulty.

The fundamental problem with defendant's argument is the incorrect belief that renewing a judgment is the same as enforcing it. The statutory renewal provisions and pertinent case law demonstrate otherwise. (§ 683.110, subd. (a) ["The period of enforceability of a money judgment . . . may be extended by renewal of the judgment"]; see also, e.g., *Goldman, supra*, 160 Cal.App.4th at pp. 262-263, fn. 4 ["there is no statutory requirement that the notice of renewal be served on the [party obligated to pay the judgment] in order for the renewal to be effective"]; *Jonathan Neil & Associates, Inc. v. Jones* (2006) 138 Cal.App.4th 1481, 1489 ["Renewal merely extends the enforceability of the judgment"] (*Jonathan Neil*.) Moreover, according to the Law Revision Commission comments to section 683.160, "[t]he notice of renewal may be served *after* the 10-year period has expired if the application for renewal is timely filed, and the judgment is enforceable after proof of service of the notice of renewal is filed unless the renewal is vacated. [16 Cal.L.Rev.Comm. Reports 1215 (1982)]." (Cal. Law Revision Com. com., Deering's Ann. Code Civ. Proc. (2015 ed.) foll. § 683.160, p. 523 (emphasis added); see also *Fair v. Bakhtiari* (2006) 40 Cal.4th 189, 195 [Law Revision Commission's comments "are deemed to express the Legislature's intent"].) Defendant's position would require service to be made within the 10-year limitations period, which is incompatible with this understanding of section 683.160.

In denying defendant's motion to vacate, the trial court implicitly found that Erika effectively renewed the judgment in 2006. That finding did not contravene section 683.160 and was

supported by substantial evidence. (See *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267 [“in the absence of a statement of decision, an appellate court will presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record” (fn. omitted)].)

2. *Plaintiff was Erika’s successor in interest and entitled to seek renewal as such*

Upon the death of a party who obtains a judgment against another, the judgment may be renewed by the party’s executor or successor in interest. (§§ 680.240 [unless context requires otherwise, term “judgment creditor” includes successor in interest], 686.010 [“After the death of the judgment creditor, the judgment may be enforced . . . by the judgment creditor’s executor or administrator or successor in interest”].) A successor in interest in this context is “the beneficiary of the decedent’s estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action.” (§ 377.11.)

Defendant contends plaintiff did not have standing to renew the judgment against him because, at the time she applied for renewal, she had not yet been named executor of Erika’s estate and the will, being unauthenticated and not yet admitted to probate, was insufficient evidence she was Erika’s successor in interest. Defendant further contends that even if there were sufficient evidence to find plaintiff was Erika’s successor, plaintiff failed to meet the procedural requirements for taking Erika’s place as the real party in interest. Neither contention is persuasive.



The trial court found there was adequate evidence to show plaintiff succeeded to Erika's interest in the judgment. Defendant has not shown that finding to be erroneous. When plaintiff applied to renew the judgment, she attached a copy of Erika's will, which bequeathed to her any proceeds obtained from the judgment against defendant. The will, therefore, made plaintiff a "beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action."<sup>4</sup> (§ 377.11.) Contrary to defendant's argument, there is no requirement that a will be probated or otherwise authenticated before a beneficiary may renew a judgment in favor of the

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<sup>4</sup> Defendant maintains Erika's will by its own terms cannot be the basis of plaintiff's status as a successor in interest because the bequest concerning the judgment against defendant was conditioned upon an event that has not come to pass (enforcement of the judgment). Defendant does not argue the will's language defeats the legacy entirely; he insists, rather, that the interest in the judgment passed under the will's residuary clause, which divided Erika's remaining estate in equal shares to plaintiff and Martin Kaneko. Defendant, however, provides no authority for the proposition that plaintiff would not be entitled to renew the judgment based on that residuary interest. Furthermore, because plaintiff was named the executor of Erika's estate before the 10-year renewal period lapsed, and because she would indisputably be entitled to renew the judgment as executor, defendant's argument concerning the will's language is not one that can establish prejudicial error warranting reversal. (See, e.g., *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 957-959 [failure to substitute real party in interest for decedent judgment creditor was "at most . . . a technical" error that did not justify reversal absent prejudice].)

decedent. (See *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1153 [court may substitute party as successor in interest to decedent prior to completion of probate]; see also § 683.140 [contents of application to renew judgment].) Thus, the trial court did not err in finding plaintiff was a successor in interest to Erika for purposes of renewing the judgment.

The trial court also correctly concluded plaintiff could renew the judgment without first satisfying the requirements of sections 377.31 and 377.32. Those provisions apply only to one who is “commenc[ing] an action or proceeding” or “continu[ing] a pending action or proceeding . . . .” (§§ 377.31, 377.32.) Neither describes a renewal of judgment.

The Code of Civil Procedure defines an “action” as “an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.” (§ 22.) “A “proceeding” includes action[s] and special proceedings before judicial tribunals as well as proceedings pending before quasi-judicial officers and boards.’ (Black’s Law Dict. [6th ed. 1990] p. 1204, col. 1.) ‘The word [“proceeding”] may be used synonymously with “action” or “suit” to describe the entire course of an action at law or suit in equity from the . . . filing of the complaint until the entry of final judgment . . . .’ (*Ibid*; see also Code Civ. Proc., §§ 20-23.)” (*Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 712, fn. 15; see also § 170.5, subd. (f) [defining “proceeding,” in chapter on disqualification of judges, as “the action, case, cause, motion, or special proceeding to be tried or heard by the judge”]; Black’s Law Dict. (10th ed. 2014) p. 1398, col. 1 [“proceeding” means “[t]he regular and orderly progression of a lawsuit, including all

acts and events between the time of commencement and the entry of judgment”; “[a]ny procedural means for seeking redress from a tribunal or agency”; “[a]n act or step that is part of a larger action”; and “[t]he business conducted by a court or other official body; a hearing”].) The adjective “pending” means “[r]emaining undecided; awaiting decision.” (Black’s Law Dict. (10th ed. 2014) p. 1314, col. 2; see also Oxford English Dict. Online (2016) <<http://www.oed.com/view/Entry/140047?rskey=3jpgQ0&result=3#eid>> [as of June 9, 2017] [“pending” means “[r]emaining undecided; continuing; awaiting decision or settlement”].)

A renewal of judgment, which occurs after an action has been prosecuted to a decision, is not encompassed within the common understanding of the phrases “commence an action or proceeding” or “continue a pending action or proceeding,” which are the phrases used in sections 377.31 and 377.32. As definitions of “proceeding” make clear, the term pertains to a procedure for seeking judicial (or quasi-judicial) redress, not to a post-judgment request that is automatically approved by a court clerk. Indeed, in contrast to a proceeding, an application to renew a judgment does not lead to an appealable order. (See *Goldman, supra*, 160 Cal.App.4th at p. 262 [“entry of the renewal of judgment does not constitute a new or separate judgment” (fn. omitted)]; *Jonathan Neil, supra*, 138 Cal.App.4th at p. 1487 [renewal of judgment “is not an appealable event” because “there is no separate entity called the ‘renewed judgment.’ There is simply ‘the judgment’”].) Nor does an application for renewal of a judgment continue any “pending” request for judicial action. Because the renewal is automatic, there is no decision to await.

Defendant asserts, correctly, that section 377.32 applies to a successor in interest who seeks to prosecute an appeal, which is itself a kind of post-judgment proceeding, but that situation is not analogous to the one before us.<sup>5</sup> An appeal, unlike a renewal of judgment, is a “proceeding” because it entails a request for redress from a judicial or quasi-judicial body. In contrast to a renewal of judgment, an appeal seeks “to create a new judgment or modify the present judgment.” (*Jonathan Neil, supra*, 138 Cal.App.4th at p. 1489.)

To further demonstrate the distinction between a post-judgment proceeding such as an appeal, and a renewal of judgment, it helps to consider why provisions such as section 377.31 and 377.32 are necessary in the first place. Because a court may only determine the rights of a party over which it has jurisdiction, “[t]raditionally, [the] death of a party . . . abated a civil action; but if the underlying cause of action survived, the action could be ‘revived’ by substituting the decedent’s personal representative into the case.” (*County of Santa Clara v. Escobar* (2016) 244 Cal.App.4th 555, 566, fn. 6.) Section 377.32 “[l]iterally . . . does not require that the affidavit be filed as a condition precedent to commencing or continuing [an action that is deemed to survive a party’s death]. However, failure to file the affidavit could possibly subject the action to a plea in abatement.”

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<sup>5</sup> When the trial court stated in its minute order that section 377.32 did not apply to post-judgment proceedings, it did not purport to conclude the statute would not apply to appeals. The court was focusing, rather, on the fact that because this case involved a judgment rather than a new or pending action, it was past the stage where someone could “initiate” or “carry on” a “prosecution.”

(*Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1523-1524.)

When one appeals a judgment, one seeks to alter the existing judgment or obtain a new judgment. Thus, the appeal involves an existing cause of action that is potentially subject to abatement. Here, however, there is nothing to abate because plaintiff does not seek to alter or replace Erika's judgment.

#### DISPOSITION

The judgment is affirmed. Plaintiff is to recover her costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.\*

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\* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.