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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DEBRA LOYD, Plaintiff and Appellant, v. TAMIKO LOYD, Plaintiff and Respondent.	B285512 (Los Angeles County Super. Ct. Nos. JCCP4788 & BC569593)

APPEAL from orders of the Superior Court of Los Angeles County. John Shepard Wiley, Jr., Judge. Affirmed.

Dermot Givens for Plaintiff and Appellant.

Law Office of Herb Fox, Herb Fox and Gnau & Tamez Law Group, Daniel Roman Tamez for Plaintiff and Respondent.

After a tragic traffic accident that took the life of a 29-year-old man chaperoning a group of prospective college applicants to Humboldt State University, the man's mother and grandmother filed wrongful death claims against the group's bus driver and the company that employed the driver of the big rig that struck the bus. The trial court ruled that only the mother had standing to pursue the wrongful death claim. The grandmother appeals, challenging that ruling as well as the court's subsequent refusal to reconsider its ruling after it withdrew the *pro hac vice* status it had conferred upon one of the mother's three lawyers. We conclude there was no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The Accident*

On a late Sunday afternoon in April 2014, a Federal Express big rig crossed the center divider of the I-5 freeway in Orland, California. The big rig struck the front end of a bus transporting several prospective applicants and several alumni chaperones back from Humboldt State University. Among those killed in the collision were Michael Myvett, Jr. (decedent) and his fiancée.

B. *Decedent's Birth and Upbringing*

Decedent was born in March 1985. Decedent's biological mother is plaintiff and respondent Tamiko Loyd (Tamiko)[1], and, by DNA tests, his biological father is Andre Island (Island). On decedent's birth certificate, however, Tamiko listed another man as decedent's father.

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1 We use the parties' first names for clarity because they share the same last name. We mean no disrespect.

From days after his birth until his 18th birthday, decedent lived with plaintiff and appellant Debra Loyd (Debra) who is his grandmother and Tamiko's mother. During his years as a minor, decedent always lived with grandmother. Tamiko lived in the household only intermittently. Soon after decedent's fifth birthday (in 1990), Debra became decedent's legal guardian. Tamiko nevertheless threw or attended several of decedent's birthday parties and attended other family events as he grew up (as evidenced by photographs of Tamiko and decedent when he was seven, 14, and 17 years old). At no point did Debra adopt decedent. Debra paid for most of decedent's living expenses while he was growing up in her household. Tamiko provided occasional financial support by buying shoes, clothing, and school supplies.

II. Procedural History

A. *Dueling Wrongful Death Actions*

In June 2014, Tamiko sued Federal Express and Silverado Stages, Inc. for the wrongful death of decedent.

In January 2015, Debra sued the same two parties as well as Volvo of North America, for (1) the wrongful death of decedent, (2) a survival claim, and (3) negligence.

B. *Litigating Standing to Sue for Wrongful Death*

Recognizing that only one claim for wrongful death may be brought, the trial court consolidated the actions, and the parties stipulated to a procedure for litigating which of decedent's relatives—Tamiko or Debra—could bring a claim for wrongful death. The parties filed written briefs and presented testimony at a July 19, 2017 hearing.

On July 20, 2017, the trial court issued a written ruling which concluded that only Tamiko had standing to sue for

decedent's wrongful death.[2] The statutes authorizing a wrongful death claim, the court noted, apply the rules of "intestate succession" where, as here, the decedent dies without a spouse, domestic partner, or any children or grandchildren. The rules of intestate succession, the court went on, provide that a decedent's mother has standing over the decedent's grandmother *unless*, among other things, the mother (1) made no effort to provide for the decedent's support, and (2) acted with the intent to abandon the decedent. The court "accept[ed] Tamiko's . . . testimony that she made at least continuing, albeit intermittent, efforts to support her son and that she had no intent to abandon him." Because Debra could not establish two of the requirements for "skipping over" Tamiko, the court ruled that Tamiko was the relative with standing to sue for decedent's wrongful death.

C. *Debra's Post-ruling Motion to Disqualify Tamiko's Counsel*

In September 2017, Debra filed a motion aimed at disqualifying (1) the two lawyers who served as Tamiko's local counsel, and (2) the Texas lawyer whom the trial court had admitted *pro hac vice* prior to the July 19, 2017 hearing. In her moving papers, Debra argued that all three lawyers were part of a "scheme" to present false evidence that minimized Debra's relationship with decedent and that the Texas lawyer had not disclosed to the court that he was being sued by the Tennessee Attorney General. Debra did not ask the court to vacate its earlier July 2017 ruling on this basis.

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2 The court also ruled that Debra had standing to bring a survival action, but Tamiko has not appealed that ruling and it is not before us.

On September 19, 2017, the trial court issued an order denying the motion to disqualify Tamiko's local counsel but denying the Texas lawyer's application to appear *pro hac vice*. The court declined to disqualify Tamiko's local counsel because Debra's motion was untimely and because it lacked evidentiary support. The court nonetheless ruled that it was "not in the interests of justice" to allow the Texas lawyer to appear *pro hac vice* because he had "demonstrate[ed] ignorance or disregard for California procedure" in (1) submitting his application to appear *pro hac vice* late, (2) not completely filling out the application, and (3) not disclosing his history of bar discipline in Texas or the pending lawsuit against him in Tennessee regarding unlawful solicitation of clients in that state.

D. *Notice of Appeal and Subsequent Events*

On October 5, 2017, Debra filed a notice of appeal to appeal the court's July 20 and September 19 orders.

On March 19, 2018, the trial court granted summary judgment to the defendants in Debra's case on her remaining claims for survival and negligence.

DISCUSSION

In this appeal, Debra argues that the trial court erred in (1) ruling that she lacked standing to sue for wrongful death, and (2) not vacating its ruling on standing when it subsequently denied the Texas lawyer *pro hac vice* status.[3] Tamiko responds

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3 Debra also argues that she is entitled to relief on a newly discovered evidence claim that she had yet to present to the trial court at the time of briefing on appeal. We decline to reach an issue on which the trial court has yet to rule.

that we may lack jurisdiction to consider Debra's appeal, but urges us to do so anyway.

I. Appealability

Neither of the orders that Debra appeals—the July 20, 2017 order determining her standing to sue for wrongful death or the September 19, 2017 order denying Tamiko's Texas lawyer permission to appear *pro hac vice*—finally disposes of *all* of Debra's affirmative claims for relief. As such, they are interlocutory and not subject to appeal where, as here, they fall outside any of the statutory exceptions allowing for the appeal of an interlocutory order. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741 ["a judgment disposing of fewer than all causes of action between the parties was nonappealable"]; Code Civ. Proc., § 904.1, subd. (a).) However, because a final judgment disposing of all of Debra's claims *was* issued in March 2018, we may treat Debra's appeal of the two interlocutory orders as a premature appeal of the final judgment. (E.g., *Hummel v. First National Bank* (1987) 191 Cal.App.3d 489, 493.) Exercising our independent review of questions of appealability (see *Alliance for California Business v. State Air Resources Bd.* (2018) 23 Cal.App.5th 1050, 1060), we elect to do so in this case.

II. Standing to Sue for Wrongful Death

Wrongful death is a statutorily created claim that comes into being once a person dies and entitles the persons specified by statute as his heirs—and only those persons—to sue "for the loss of companionship and for other losses suffered [by those heirs] as a result of [the] decedent's death." (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1263; Code Civ. Proc., §§ 377.60-377.62.) Standing to sue is limited to those "persons who, because of their relation to the deceased, are presumed to be

injured by his death." (*Nelson v. County of Los Angeles* (2003) 113 Cal.App.4th 783, 789, fn. 6.) "'"[S]tanding" among multiple claimants is determined by statutory rank.' [Citation.]" (*Scott v. Thompson* (2010) 184 Cal.App.4th 1506, 1511 (*Scott*).) To the extent the question of standing turns on statutory interpretation, our review is de novo (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247); to the extent it turns on review of the trial court's factual findings, our review is for substantial evidence (*San Luis Rey Racing, Inc. v. California Horse Racing Bd.* (2017) 15 Cal.App.5th 67, 73).

Where, as here, a person dies without any "surviving spouse, domestic partner, children, [or] issue of deceased children," the wrongful death statute confers standing to sue for wrongful death on "the persons . . . who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a); *Rosales v. Battle* (2003) 113 Cal.App.4th 1178, 1185 ["the word 'heirs' refers to those individuals who may inherit by intestate succession under California law"].) The law of intestate succession is located in the Probate Code. (Prob. Code, § 6400 et seq.; *Jackson v. Fitzgibbons* (2005) 127 Cal.App.4th 329, 335-336; *Scott*, *supra*, 184 Cal.App.4th at p. 1511.) The Probate Code specifies that where a person dies without a surviving spouse or children, his property—and, as incorporated into the wrongful death statutes, standing to sue for wrongful death—goes *first* to "the decedent's parent or parents equally" (Prob. Code, § 6402, subd. (b)) and, if there are no parents or siblings of the decedent, *then* to the decedent's grandparent (*id.*, subd. (d)). However, the Probate Code provides that a parent may lose her priority in this order of succession if, among other things, the parent "[(1)] left the child during the

child's minority [(2)] without an effort to provide for the child's support or without communication from the parent, [(3)] for at least seven consecutive years [(4)] that continued until the end of the child's minority, [(5)] with the intent on the part of the parent to abandon the child." (Prob. Code, § 6452, subds. (a)(3) & (b).) Under this provision, "[t]he failure to provide support or to communicate for the prescribed period is presumptive evidence of an intent to abandon." (*Id.*, subd. (a)(3).)

We independently agree with the trial court that the question of who has standing to sue for wrongful death in this case—Tamiko (as decedent's mother) or Debra (as decedent's grandmother)—is governed by the above described Probate Code provision. What is more, the trial court's factual findings that Tamiko made some effort to provide for decedent's support as well as communicated with him and that she did not have an intent to abandon decedent—two of the five prerequisites for the loss of a parent's priority—are supported by substantial evidence. Tamiko testified that she provided intermittent financial support by buying decedent shoes, clothing, and school supplies, and the court "accept[ed]" her testimony as credible. This is sufficient to constitute substantial evidence of that support as well as the lack of an intent to abandon. (*People v. Lewis* (2001) 25 Cal.4th 610, 646 ["The testimony of a single witness . . . can constitute substantial evidence"].) What is more, the photographs admitted into evidence showed Tamiko and decedent together when he was seven, 14, and 17, thereby refuting the inference that Tamiko had not communicated with decedent and was gone from his life for a seven-year period.

Debra raises two arguments in response.

First, she urges us to decide the question of standing to sue for wrongful death by looking to Family Code section 7822, which provides that a child's natural parent loses certain rights if the parent makes no "provision for the child's support" for a period of "six months." (Fam. Code, § 7822, subd. (a)(2).) This is far less than the seven years mandated by the Probate Code, Debra continues, and is clearly satisfied by the evidentiary showing made in this case. We reject this argument. The Family Code section Debra cites defines the conditions under which a family court may declare a child to be "free from the custody and control" of his or her parent (Fam. Code, § 7820), which is a prerequisite to the adoption of that child by another. (*Neumann v. Melgar* (2004) 121 Cal.App.4th 152, 162; *In re Marriage of Jill & Victor D.* (2010) 185 Cal.App.4th 491, 500.) This section has nothing to do with the law of intestate succession. Because our Legislature has defined standing to sue for wrongful death by the law of intestate succession, we may not look to a different body of law; rewriting statutes is beyond our purview. (*Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 369 [a "court cannot, . . . in the exercise of its power to interpret, rewrite [a] statute"].)

Second, Debra contends that, even if the trial court properly looked to the law of intestate succession, Debra presented evidence that Tamiko provided no financial support whatsoever to decedent while he was a minor. To be sure, Debra testified that she threw Tamiko out of her house when decedent was less than a year old and that Tamiko thereafter provided no financial support and had no communication with decedent. But Tamiko and decedent's godfather provided contrary testimony: Tamiko testified that she provided intermittent support, and both

Tamiko and the godfather testified that Tamiko came to some of decedent's birthday parties and other family events. The photographs introduced into evidence corroborate this continued contact. Debra also argues that there was no evidence that Tamiko's intermittent financial support occurred during the last seven years before decedent turned 18 years old (which the pertinent time window under Section 6452), but this argument ignores Tamiko's testimony that she "always provided support" for decedent "when [he] was a minor," including "when he was little" and in "college." At bottom, Debra is asking us to disregard the trial court's "accept[ance]" of Tamiko's testimony that she provided decedent intermittent support and is accordingly asking us to reweigh the evidence ourselves. This is beyond our power. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1285-1286 [substantial evidence review requires the appellate court to defer to a trial court's credibility determinations and precludes any reweighing of the evidence].)

III. Effect of Ruling Denying *Pro Hac Vice* Status

A trial court has the discretion to allow an attorney licensed to practice law in another state to appear in a California court by granting permission for the attorney to appear *pro hac vice*. (Cal. Rules of Court, rule 9.40; *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1265.) A court also has the power to revoke *pro hac vice* status and thereby disqualify the attorney from appearing in California courts. (*Sheller v. Superior Court* (2008) 158 Cal.App.4th 1697, 1713-1716.) Debra asserts that the trial court's order revoking the Texas attorney's *pro hac vice* status in September 2017 retroactively invalidates the court's earlier July 2017 ruling regarding standing to sue for wrongful death. Because the resolution of this claim turns on the

application of law to undisputed facts, our review is de novo. (E.g., *Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212.)

We reject Debra's claim for three reasons.

First, she forfeited the argument that revocation of the Texas lawyer's *pro hac vice* status retroactively voided all prior proceedings in which he appeared because Debra never made that argument to the trial court. (E.g., *People v. Stitely* (2005) 35 Cal.4th 514, 538.)

Second, the trial court's order did not purport to have any retroactive effect. The court denied the lawyer *pro hac vice* status and said nothing about that revocation being anything but prospective; accordingly, the attorney's appearance before the court during the July 2017 hearing remained proper.

Lastly, even if we assume that the trial court's revocation of the Texas lawyer's *pro hac vice* status had retroactive effect, Debra is not entitled to relief because she was not prejudiced by the disqualified status of that lawyer. The Texas lawyer was only one of three lawyers representing Tamiko, and he examined only two of the three witnesses who testified at the hearing. More to the point, we are persuaded by the cases holding a losing party's objection to the disqualification of the prevailing party's attorney is neither prejudicial to the losing party nor an affront to the integrity of the litigation process itself. (*Russell v. Dopp* (1995) 36 Cal.App.4th 765, 774 ["if the unlicensed person wins the lawsuit, the litigation process may be found to be unaffected by the fraud on the court"]; *Gomes v. Roney* (1979) 88 Cal.App.3d 274, 275 ["The ineligibility of one of [the prevailing party's attorneys to practice law] is a collateral matter having nothing to do with the merits of the action between the parties"]; *Alexander v. Robertson* (9th Cir. 1989) 882 F.2d 421, 425 ["Nor is it

preordained that the unlicensed practice of law, without more, inhibits a court from adjudging cases impartially"].) Debra has not demonstrated why, either factually or legally, we should depart from this precedent.

DISPOSITION

The orders are affirmed. Tamiko is entitled to her costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ