Filed 11/15/17 Ayers v. Montgomery CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| ANNE L. AYERS,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>PENELOPE S. MONTGOMERY,<br><br>Defendant and Respondent. | B268835<br><br>(Los Angeles County Super. Ct. No. BP110286) |

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

Panitz & Kossoff, Kenneth W. Kossoff, for Plaintiff and Appellant.

Sedgwick, Caroline H. Mankey and Hall R. Marston, for Defendant and Respondent.

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Anne L. Ayers appeals from a probate judgment denying her petition to recover property of the estate of decedent Margaret E. Ayers, the probate court finding that Anne failed to establish Margaret possessed separate property at the time of her death. We affirm.

## BACKGROUND

As three participants in these proceedings share the same last name, we will sometimes use their first names. Margaret practiced alternative medicine in Beverly Hills. She had a doctorate degree in alternative medicine and had invented technology to help individuals recover brain function after injury or illness.

From 1996 to 2000, Margaret lived with Heidi Crane in Toluca Lake, California. When Crane moved out in 2000, she took much of the furniture with her, requiring Margaret to purchase new kitchen, office and dining room furniture and other furnishings.

In September 2005, Margaret deeded the Toluca Lake property in joint tenancy to herself and Penny Montgomery, an alternative medicine practitioner from Kansas. Montgomery moved into the residence in October 2005, and the two cohabited there until Margaret's death in 2008. Margaret and Montgomery purchased furniture, art, and household items together, and used joint funds to make substantial repairs and improvements to the property.

Margaret and Montgomery also began working together in Margaret's office in Beverly Hills, treating patients and training practitioners in the use of electroencephalograph machines Margaret had invented. They commingled income from the partnership, and Margaret paid for many of their shared

household expenses out of the business bank accounts. In 2005, Montgomery closed her Kansas office and brought its furniture to the Beverly Hills office.

Margaret fell seriously ill in February 8, 2008, and was admitted to the hospital. She continued to pay the partnership's bills for a time, then asked Montgomery to sign her name on checks. On February 16, 2008, she executed a power of attorney authorizing Montgomery to conduct the partnership's business. Montgomery thereafter continued to pay the partnership's bills, and also transferred funds from various business accounts to the couple's joint account in order to have sufficient funds to pay for Margaret's medical expenses.

Margaret passed away in March 2008.

After Margaret's death, Montgomery petitioned the Los Angeles Superior Court to probate a will Margaret had executed in Kansas in 2003. Montgomery also petitioned the court for letters of administration of Margaret's estate. The court dismissed the probate petition without prejudice because the witnesses to execution of the will could not be identified or located. It denied the petition for letters of administration because Montgomery was not an heir.

On July 10, 2009, while these probate proceedings were ongoing, Anne Ayers petitioned the court for letters of administration of Margaret's estate. The court issued the letters on April 20, 2010.

On October 20, 2010, Anne filed a petition pursuant to Probate Code section 850 (the 850 Petition) seeking to determine title to and retrieve personal property belonging to Margaret's estate. Montgomery answered the petition, contending any property Margaret had owned had passed to her, Montgomery,

pursuant to a *Marvin* agreement. (*Marvin v. Marvin* (1976) 18 Cal.3d 660, 672 ["a contract between nonmarital partners will be enforced unless expressly and inseparably based upon an illicit consideration of sexual services"].)

On September 2, 2011, Montgomery filed a verified cross-petition seeking a determination that Margaret's personal property had passed to her pursuant to a *Marvin* agreement. (The *Marvin* Petition.)

Anne demurred to the *Marvin* petition and moved in limine to exclude evidence supporting it. The probate court overruled the demurrer and denied the motion without substantive comment.

Trial was held over seven days. A list of personal property at issue in the proceedings, including household furnishings, artwork, jewelry, collections, and cash, was derived from Margaret's 2003 will and from Anne's recollection of items Margaret had owned.

Anne and Donald Ayers, Margaret's siblings, testified they had not visited Margaret's home since 1994, and last spoke to her in 2006, about a year and a half before her death.

Joni and Ritchie Spiers, Margaret's friends, testified they visited Margaret's home from 2003 to 2007, and observed that the furniture and artwork in it never changed in that time.

Heidi Crane, Margaret's old roommate, who had not seen Margaret since 2000, testified that certain furnishings, works of art, and pieces of jewelry at issue had belonged to Margaret.

Montgomery testified many of the items at issue were not in Margaret's possession when their relationship began, some had been given away by Margaret, and some did not belong to the estate, as they had been purchased either by her separately or by

her and Margaret jointly. Montgomery also testified some items at issue were of trivial value and had been sold by her at an estate sale after Margaret's death. Montgomery testified that money in her and Margaret's joint savings and checking accounts was owned jointly by them, and money in Margaret's business accounts had been earned jointly by them.

On July 21, 2015, the probate court filed a statement of decision in which it found Anne failed to prove that the personal property at issue belonged to Margaret's estate. The court acknowledged that both sides sought determination of the *Marvin* issue, but stated the issue was irrelevant and need not be resolved. The court also found Montgomery made no binding judicial admissions.

Judgment was entered on October 9, 2015, and Anne timely appealed.

## DISCUSSION

Anne contends the probate court improperly placed the burden on her to prove what property belonged to Margaret's estate. In any event, she argues, insufficient evidence supports the judgment because Montgomery made a judicial admission that all the personal property at issue belonged to the estate. Anne further contends the court improperly declined to resolve the *Marvin* issue.

### A. Burden of Proof

The administrator of a decedent's estate has an affirmative duty to marshal the estate's assets. (*Lobro v. Watson* (1974) 42 Cal.App.3d 180, 188-189.) She may do so by commencing a probate action pursuant to Probate Code section 850, which provides that where a decedent has died "having a claim to real

or personal property, title to or possession of which is held by another," the personal representative of the decedent may petition the superior court for an order to recover the property. (Prob. Code, § 850, subd. (a)(2)(D).)

The administrator bears the burden of proving that property held by a third person belongs to the decedent's estate. (*Estate of Della Sala* (1999) 73 Cal.App.4th 463, 469-470 ["Issues of fact in probate proceedings are to be tried in conformity with the rules of practice in civil actions. [Citation.] A party in a civil action has the burden of proof as to each fact essential to his claim for relief"].)

Here, Anne, as Margaret's administrator, claimed that property in Montgomery's possession belonged to Margaret's estate. As the claimant seeking relief, she bore the burden of proving the character of that property. She failed to carry her burden.

Citing several sections of the Probate Code, Anne argues that property belonging to an estate but held by third parties must be returned to the estate. She is correct, but first the property must be shown to belong to the estate, which she failed to prove here.

Anne argues that she is the respondent in these probate proceedings, as they were initiated by Montgomery when she sought to probate Margaret's 2003 will. When that petition was denied, Anne argues, Montgomery lost all right to property listed in the will and bore the burden of proving she was entitled to retain it. We disagree. Denial of Montgomery's petition merely preserved the status quo. To alter the status quo, i.e., to transfer property from Montgomery's possession to Margaret's estate,

Anne bore the burden of proving the property belonged to the estate.

**B. Sufficiency of Evidence**

Anne argues insufficient evidence demonstrates Margaret's estate contained no separate personal property because Montgomery judicially admitted when she submitted Margaret's 2003 will to probate that items bequeathed in the will belonged to the estate. We disagree.

"The admission of fact in a pleading is a 'judicial admission.' " (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271.) An admission in pleading " 'is a *waiver of proof* of a fact by conceding its truth, and it has the effect of removing the matter from the issues.' " (*Id.* at p. 1271.) " ' "When a trial is had by the Court without a jury, a fact admitted by the pleadings should be treated as 'found.' . . . If the court does find adversely to the admission, such finding should be disregarded in determining the question whether the proper conclusion of law was drawn from the facts found and admitted by the pleadings. . . . In such case the facts alleged must be assumed to exist. Any finding adverse to the admitted facts drops from the record, and any legal conclusion which is not upheld by the admitted facts is erroneous." ' " (*Ibid.*)

Here, Montgomery petitioned the superior court both to probate Margaret's 2003 will, which made certain bequests, and to issue letters testamentary. In her petitions she made no statement about the nature of the property listed in the will. Neither did she incorporate the will by reference into her pleadings. The will thus constituted Margaret's statement about the nature of her property, not Montgomery's statement. The petitions therefore set forth no judicial admission.

### C. *Marvin* Agreement

Anne contends the *Marvin* agreement between Margaret and Montgomery either did not exist or was invalid.

A *Marvin* agreement is an instrument by which cohabitants whose relationship is not formalized may provide for allocation of property. Such an agreement will be enforced like any other contract unless it is "expressly and inseparably" based on illicit consideration. (*Marvin v. Marvin*, *supra*, 18 Cal.3d at p. 672.)

Here, the probate court found no evidence supported Anne's contention that Margaret owned separate personal property at the time of her death, a ruling we affirm. Therefore, any agreement to transfer property is irrelevant.

## DISPOSITION

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

NOT TO BE PUBLISHED.

CHANEY, J.

I concur:

JOHNSON, J.

ROTHSCHILD, P. J.,

I respectfully dissent.

Anne Ayers (the administrator), as the personal representative of a probate estate, has "the right to, and shall take possession or control of, all the property of the decedent to be administered in the decedent's estate and shall collect all debts due to the decedent or the estate." (Prob. Code, § 9650, subd. (a)(1).) This "marshaling of estate assets is one of the personal representative's main functions" and, to accomplish this task, the administrator may need to pursue litigation to recover estate property held by another. (Ross, Cal. Practice Guide: Probate (The Rutter Group 2017) ¶¶ 6:1, pp. 6-1--6-2, 15:555 et seq., pp. 15-154--15-167.)

In this case, the administrator filed a petition for an order that Montgomery deliver personal property and financial records allegedly belonging to the estate. The property included the decedent's business assets, bank accounts, and other personal property, such as household items, jewelry, artwork, and the proceeds from Montgomery's sale of such items after the decedent's death.

Montgomery answered the petition and filed a cross-petition asserting in each that she owned the disputed property pursuant to an oral and implied agreement enforceable under *Marvin v. Marvin* (1976) 18 Cal.3d 660 (*Marvin*). In her cross-petition, Montgomery sought an order determining that she holds title to the money and property described in the administrator's petition.

At trial, the administrator introduced evidence of two corporations formed by the decedent, a signature card showing the decedent was the sole signatory for one of the corporate

accounts, and numerous bank statements showing the decedent or the decedent's corporations as the sole holder of four bank accounts. The administrator also introduced photographs and testimony that supported her claim that the decedent owned particular household items, jewelry, and artwork prior to the time Montgomery and the decedent began living together.

Montgomery testified that she and the decedent had an agreement to combine their assets, pool their earnings, and "co-own everything." She produced documents evidencing the joint ownership of their shared residence in Toluca Lake and certain financial accounts—property the administrator does not contend belongs to the estate. Montgomery produced no writings, however, that evidenced joint ownership of the two corporations, four bank accounts, and other personal property that the administrator sought for the estate.

The trial court denied the administrator's claims because she "failed to satisfy the burden of proof of preponderance of evidence" that the "property was the separate property of [the decedent]." The trial court stated that it did not decide Montgomery's *Marvin* claim because "the factual threshold necessary to consider the *Marvin* issue . . . was not met." The judgment provides that certain property "was commingled and jointly owned by [the decedent] and . . . Montgomery as of the date of [the decedent's] death."

### A. The Trial Court Should Have Placed the Burden of Proof on Montgomery

The administrator argues that the trial court erred by placing the burden of proving ownership on her. I agree with the administrator.

Generally, "a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500; see *Estate of Della Sala* (1999) 73 Cal.App.4th 463, 469-470.) Here, the administrator asserted a claim that the property described in her section 850 petition belonged to the estate. The fact that the decedent held an interest in the property at the time of her death is essential to her claim. Under the general rule, therefore, the administrator would have the burden of proving that fact.[1]

The general rule, however, is not a " ' "general solvent for all cases," ' " and must yield when considerations of policy and fairness justify shifting the burden of proof in a particular case. (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 35-36; see also *Adams v. Murakami* (1991) 54 Cal.3d 105, 120; *In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1267 (*Margulis*); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1188.) In deciding whether to shift the burden of proof, courts have considered " 'the knowledge of the parties concerning the particular fact, the availability of the evidence to the parties, the most desirable result in terms of public policy in the absence of proof of the particular fact, and the probability of the existence or nonexistence of the fact.' " (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 660-661, quoting Cal. Law Revision Com. com., 29B West's Ann. Evid. Code, § 500 (1966) p. 431.)

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[1] The existence of facts supporting a *Marvin* agreement were likewise essential to Montgomery's defense and cross-petition, and she had the burden of proving such facts.

A "common trigger for burden-shifting is 'when the parties have unequal access to evidence necessary to prove a disputed issue. " 'Where the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.' [Citations.]" [Citation.]' [Citations.]" (*Margulis*, *supra*, 198 Cal.App.4th at p. 1268.)

Here, the administrator had no connection with the corporations, businesses, and bank accounts that were the subject of her petition; nor did any of the decedent's heirs, for whose benefit the administrator filed the petition. She could not, therefore, readily obtain the documents and records necessary to establish the essential facts concerning ownership of such property. Nor did she have direct access to information regarding the identity, acquisition, and ownership of the items of personal property that had been in the house that the decedent and Montgomery shared.[2]

Montgomery, nevertheless, testified at trial that she had been the decedent's business partner for many years and owned in joint tenancy with the decedent the corporation Neuropathways EEG Imaging (NEI). Montgomery also admitted that she had access to bank accounts held solely in the decedent's

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[2] The administrator attempted to obtain information regarding the decedent's businesses and property from Montgomery through interrogatories. In her responses, Montgomery answered "N/A" to an interrogatory requesting the identification of documents regarding the decedent's businesses, and stated that the Toluca Lake residence was the only property she co-owned with the decedent.

name and in the name of corporations that were the subject of the administrator's petition.

Compared to the administrator, therefore, Montgomery had greater knowledge and access to evidence concerning NEI, the decedent's business, and the bank accounts in the decedent's name. Indeed, Montgomery continued to operate the business for some time after the decedent's death. By sharing the Toluca Lake residence with the decedent, Montgomery indisputably had greater knowledge and access to evidence concerning the ownership of the furniture, art, and other personal property in that residence.

Policy considerations also weigh in favor of shifting the burden to Montgomery. The administrator has a fiduciary relationship with the decedent's heirs and creditors (*Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 364-365), and is statutorily obligated to marshal the estate's property for their benefit (Prob. Code, § 9650, subd. (a)(1)). Yet, here, the administrator is an outsider with respect to the property she must recover and distribute. She could not, of course, call upon the decedent to obtain the facts. Montgomery, on the other hand, held all the cards, so to speak. Less figuratively, Montgomery had physical possession of the property at issue—at least that which she had not sold after the decedent's death—and access to the decedent's bank accounts, from which she withdrew funds around the time of the decedent's death. Applying the general burden of proof rule under these circumstances would encourage those with access to the property of others to take that property upon the owner's death and put the estate's administrator to the task of identifying, locating, and recovering such property from

the taker.[3] Under these circumstances, the burden should be on the one who has possession of property, sold property during the course of the probate proceedings, withdrawn funds from accounts in the decedent's name, and taken control of the decedent's business; not on the person attempting to recover property for the benefit of the heirs and creditors.

A shift in a burden of proof to avoid unfairness to a plaintiff may, however, merely shift the unfairness to the defendant. If, for example, neither party in litigation has any knowledge of or access to evidence concerning a disputed fact, it would presumably be unfair to place the burden of proof on the defendant. Such a rule would unwisely encourage factually baseless claims that a defendant could not disprove. In order to avoid such unfairness to a defendant, courts may condition a shift in the burden of proof on the plaintiff making an initial, or prima facie, evidentiary showing of particular facts.

*Margulis*, *supra*, 198 Cal.App.4th 1252 is instructive. The husband in that marriage dissolution case controlled the couple's finances and continued to do so after they separated. The wife asserted that, in determining the value of the parties' community property shares, the husband should be charged with the value of certain financial accounts and investments. The wife produced a two-page financial statement that the husband had prepared after they had separated and prior to the start of the dissolution proceeding. (*Id.* at p. 1262.) The statement referred to a money market account, an individual retirement account (IRA),

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[3] This task will be particularly burdensome if, as here, the person taking the property also uses evasive discovery responses to keep the administrator in the dark about the decedent's assets and produces few documents at trial to support her claim.

" 'marketable securities,' " real estate, and other investments. (*Ibid.*) According to the financial statement, the value of the assets was $1,305,500. (*Ibid.*) Other than evidence of withdrawals from the IRA, the husband produced no evidence regarding his disposition of funds under his control. The wife argued that the burden of proof should have shifted to the husband "to *disprove* the values stated" on the financial statement and "to prove the value and disposition of the community funds postseparation." (*Ibid.*) The trial court ultimately gave no weight to the financial statement, and charged the husband with $184,390 based upon his evidence concerning the IRA account. (*Ibid.*)

The Court of Appeal reversed. Based upon " 'bedrock concerns' of 'policy and fairness,' " the court stated the rule "that once a nonmanaging spouse makes a prima facie showing concerning the existence and value of community assets in the control of the other spouse postseparation, the burden of proof shifts to the managing spouse to rebut the showing or prove the proper disposition or lesser value of these assets. If the managing spouse fails to meet this burden, the court should charge the managing spouse with the assets according to the prima facie showing." (*Margulis*, *supra*, 198 Cal.App.4th at pp. 1267-1268.)

In applying this rule, the court held that the wife's introduction of the financial statement satisfied her initial burden to show that the husband controlled community assets of a certain value postseparation. (*Margulis*, *supra*, 198 Cal.App.4th at p. 1273.) The burden then shifted to the husband "to rebut the presumption charging him with the assets listed" on the financial statement. (*Ibid.*)

A conditional shifting of the burden of proof is appropriate here. The administrator introduced documents reflecting the formation of NEI in 1994—more than a decade before the two began living together—and a bank signature card for NEI signed only by the decedent. The administrator also introduced bank account statements for NEI and two accounts that, based on the statements, were held solely in the decedent's name. Statements for one of the accounts in the decedent's name also indicate that it was used for the unincorporated business, Psychoneurophysiology, which Montgomery asserted she jointly owned with the decedent. These documents, like the financial statement in *Margulis*, were sufficient to make a prima facie showing that the decedent held an interest in NEI, the assets used in the Psychoneurophysiology business, and the bank accounts in her name.

Regarding the personal property items in the Toluca Lake residence, the administrator produced photographs of items in the residence and testimony of people who had known the decedent before and after Montgomery began living together. Such evidence satisfied the requirement of a prima facie showing that the decedent held an interest in such property. That showing should have caused a shift in the burden of proof to Montgomery to produce evidence establishing that the decedent held no interest in the property.

Because the trial court imposed on the administrator the burden of proving the decedent's interest in the subject property and denied relief based on the finding that the administrator failed to meet that burden, I would reverse the judgment and direct the trial court to hold a new hearing and apply the burden shifting rules outlined above.

### B. There Is No Basis for Granting Affirmative Relief for Montgomery

The judgment is flawed for another reason. The trial court did not merely deny the administrator's requested relief, it also granted affirmative relief to Montgomery. By declaring that the subject property was "jointly owned" by the decedent and Montgomery, the trial court effectively awarded to Montgomery at least part of the relief she sought in her cross-petition: A determination that Montgomery holds title to the money and property described in the administrator's petition.

The only basis upon which Montgomery sought affirmative relief was that she had a *Marvin* agreement with the decedent. The trial court, however, expressly declined to decide Montgomery's *Marvin* claim and, in the statement of decision, made no findings in her favor on the claim. The conclusion in the judgment that the decedent and Margaret jointly owned the listed property is therefore unsupported by the court's findings.

### C. The Judgment Should Be Clarified

If the matter was to be retried and the trial court continued to find that any of the subject property was owned in some manner by both the decedent and Montgomery, I would further direct the trial court to avoid an ambiguity in the current judgment and specify the nature of any joint ownership.

The current judgment states that the specified property "was commingled and jointly owned by [decedent] and . . . Montgomery as of the date of [the decedent's] death." It is not clear what the trial court meant by "jointly owned." Under California law, co-owners of property can hold property as joint tenants or as tenants in common. (Civ. Code, §§ 683, 686.)

Individuals can also be partners in a partnership that owns property. (*Id.*, § 686.)[4] The differences between these forms of ownership have important implications to Montgomery and the decedent's heirs.

Property that was held by decedent and Montgomery as joint tenants would belong to Montgomery because such property includes the right of survivorship. (*Estate of Propst* (1990) 50 Cal.3d 448, 455; Civ. Code, § 683; Prob. Code, §§ 5130, 5302, subd. (a).) By contrast, property that the decedent and Montgomery held jointly as tenants in common passes to the decedent's devisees and heirs. (See *Dieden v. Schmidt* (2002) 104 Cal.App.4th 645, 650; see also *Fifield v. Greeley* (1955) 132 Cal.App.2d 512, 520 ["title by survivorship occurs only when proper[t]y is held in joint tenancy"].)

If, by "jointly owned," the trial court meant that property was owned by a partnership between the decedent and Montgomery, the decedent's death would have caused her "dissociation" from the partnership and required the partnership to either pay a "buyout price" to the estate's administrator (Corp. Code, §§ 16601, subd. (7)(A), 16701, subd. (a)) or to wind up the partnership and distribute the decedent's net share of the partnership assets to the administrator. (Corp. Code, § 16807, subd. (a); *Corrales v. Corrales* (2011) 198 Cal.App.4th 221, 227-228 [dissociation of one partner from a two-person partnership dissolves partnership by operation of law].)[5]

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[4] California law also allows property to be held, under circumstances not applicable here, as community property. (Civ. Code, § 686.)

[5] In its statement of decision, the trial court stated that it did "not believe that doctrines of contractual law [were] relevant

The trial court's "jointly owned" phrase is not clarified by the statement of decision, which states that the administrator failed to prove that the subject property was the estate's separate property, "rather than property jointly owned by [decedent] and . . . Montgomery, whether due to the laws of joint tenancy or simply as assets jointly owned by both women during their many years of their professional and business relationship." By distinguishing property that is jointly owned "due to the laws of joint tenancy" from property that is "jointly owned by both women during their many years of their professional and business relationship," the trial court appeared to view the latter type of joint ownership as something different from joint tenancy. Because only joint tenancy includes a right of survivorship, the trial court's distinction suggests that the latter manner of holding property did not include a right of survivorship and, therefore, such property passed, to the extent of the decedent's interest, to the estate. Even so, in listing particular items of property in the judgment, the trial court did not identify which were held in joint tenancy and which were not.

A joint tenancy with a right of survivorship can be created only by an instrument in writing that specifically sets forth the intent to create a joint tenancy. (Civ. Code, § 683; *California Trust Co. v. Bennett* (1949) 33 Cal.2d 694, 697; *Berl v. Rosenberg* (1959) 169 Cal.App.2d 125, 133.) It appears from our record that the only property that satisfies that requirement and, therefore, the only property held in joint tenancy is the Toluca Lake

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to these facts." Because a partnership is created by contract, it appears that the trial court did not base its joint ownership conclusion on a finding that the decedent and Montgomery had a partnership.

residence and certain bank accounts expressly held in both parties' names. (See Prob. Code, §§ 5130, 5302, subd. (a).) Any other property that was "jointly owned" was thus held by the parties in some form that did not include the right of survivorship. Nevertheless, the trial court's failure to specify the nature of the "joint" ownership as to particular property has left the issue concerning the estate's interest in property unresolved.

For all the reasons I have discussed, I would reverse the judgment and remand the matter for a new trial.

ROTHSCHILD, P. J.