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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

DAVID F. WELCH, JR., as
Co-Trustee, etc.,

Plaintiff, Defendant and
Respondent,

v.

ROBERT K. WELCH, as
Co-Trustee, etc.,

Plaintiff, Defendant and
Appellant.

B286217

Los Angeles County
Super. Ct. No. BP156171

APPEAL from an order of the Superior Court of Los Angeles County, David J. Cowan, Judge. Affirmed.

Pray, Price, Williams and Picking and David M. Price for Plaintiff, Defendant and Appellant.

Primuth, Driskell & Terzian and Steven C. Valerio for Plaintiff, Defendant and Respondent.

INTRODUCTION

Brothers David F. Welch, Jr. and Robert K. Welch¹ filed competing petitions in the probate court relating to the administration of their deceased mother's trust. David and Robert were named as co-trustees and they are the sole remaining beneficiaries of the trust.

David's petition sought to remove Robert as co-trustee primarily because, for more than six years, Robert has refused to speak or communicate in any meaningful way with David about the trust and its assets and has also failed to participate in the timely distribution of trust assets. As a result, substantial assets are still held by the trust (including the family home in Pasadena and more than \$500,000 in trust bank accounts) and more than \$100,000 held in trust bank accounts has escheated to the state. The probate court granted David's request and removed Robert as trustee; Robert appeals. Finding no abuse of the court's discretion, we affirm the order removing Robert as a co-trustee. To the extent Robert challenges other matters embraced by the court's order, we conclude the issues are either not ripe for our review or are forfeited because he fails to present any cogent legal argument.

Robert's petition for instructions concerned the validity of his mother's death certificate. More particularly, Robert feared that he might be subject to criminal liability for using the death certificate because, in his view, it does not accurately state his mother's cause of death. We conclude, as the court did, that Robert's position is not well taken and affirm.

¹ We refer to members of the Welch family by their first names in order to avoid confusion. No disrespect is intended.

FACTS AND PROCEDURAL BACKGROUND

1. Background Facts

Robert and David Welch's mother, Marjorie, died on July 19, 2008. Prior to her death, Marjorie created a living trust (The Marjorie E. Welch Living Trust dated May 2, 1991, amended August 25, 2006) (trust) providing in pertinent part that, upon her death, the trustee should divide all trust property into two equal shares and distribute the shares to her children, Robert and David, outright. The trust also provides that upon Marjorie's death, Robert and David shall act as co-trustees and that if either son ceases to act as a co-trustee then the remaining son shall act as the sole trustee.

At the time of trial—more than eight years after Marjorie's death—the trust still held title to real property in Pasadena (the family home) and held multiple bank accounts containing more than \$500,000. Bank accounts in the name of the trust containing more than \$100,000 had escheated to the state due to inactivity.

2. David's Petition to Remove Robert as Co-Trustee

In 2014, approximately six years after Marjorie's death, David filed a petition seeking to remove Robert as co-trustee of the trust (removal petition). David contended that Robert "had been unwilling and unable to continue in his capacity as Co-Trustee of the Trust, refusing to communicate with Petitioner and refusing to take any action whatsoever in his capacity as Co-Trustee, which are necessary to effectuate proper distribution of the Trust assets." As a result, various trust assets remained undistributed and substantial funds held by the trust in an account at Well Fargo Bank had escheated to the state due to inactivity. Further, Robert had been living in the family home

(one of the trust's major assets) without paying rent since Marjorie's death in 2008, which action David alleged was in breach of Robert's duties as a trustee. Finally, David explained that due to Robert's refusal to cooperate, no final tax returns had been filed on behalf of the estate.

As pertinent here, David requested an order removing Robert as co-trustee and authorizing David to act as sole trustee of the trust. He also requested attorney's fees and costs.

Robert objected to the removal petition, claiming that Marjorie's death certificate contained an "erroneous" and "misleading" cause of death. As a result, Robert argued, no action could be taken in regard to the distribution of trust assets until a corrected death certificate was obtained. Regarding the family home, Robert contended he and David were both in possession of the home and therefore the payment of rent was "futile and of no effect."

3. Robert's Petition for Instructions Regarding the Death Certificate

In 2015, one year after David filed the removal petition, Robert filed a petition for instructions seeking an order correcting Marjorie's death certificate "to indicate the accurate cause of death." The original death certificate stated that Marjorie's cause of death was aspiration pneumonia and chronic renal failure. But Robert believed, based on his observations at the hospital and his review of Marjorie's medical records, that she died of acute renal failure due to dehydration. In 2009, Robert received a letter from one of Marjorie's treating physicians agreeing with Robert's assessment to some extent, i.e., that she died from acute renal failure rather than chronic renal failure.

Robert did not obtain a corrected or amended death certificate. But he indicated in his petition for instructions that “[g]iven the fact that the death certificate of the settlor is incorrect, the Petitioner is justifiably concerned that he may commit a crime [fn. omitted] by submitting a false death certificate in connection with the collection of trust bank accounts and other assets and filing appropriate federal estate forms which require the attachment of a death certificate.” As the basis for his concern, Robert cited Health and Safety Code section 103800² and Penal Code section 115.³

In his prayer for relief, Robert requested declarations from the court stating he “has not caused any false or inaccurate information to be included in the Settlor’s death certificate,” and that his “use of the existing death certificate to obtain a distribution of trust assets does not constitute a violation of

² That section, which applies to birth certificates, provides: “Any person who willfully makes or files or causes to be made or filed a false certificate or affidavit under Chapter 4 (commencing with Section 102525) is guilty of a felony. The subject is also liable to the State of California for a civil penalty in the amount of five thousand dollars (\$5,000). The civil penalty may be recovered in an action filed by the Attorney General in any court of competent jurisdiction. A penalty so recovered shall be paid into the State Treasury to the credit of the General Fund.”

³ That section provides in pertinent part: “(a) Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony. [¶] (b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section.”

California Health and Safety Code § 103800 or California Penal Code § 115.”

4. The Amended Death Certificate

Although David did not share Robert’s anxiety about using their mother’s death certificate in connection with trust administration, David obtained an amended death certificate in October 2016, in an effort to resolve Robert’s concerns and administer the trust amicably. The amendment removed chronic renal failure as a cause of death and substituted acute kidney failure and dehydration. Robert refused to use the amended death certificate.

5. The Trial

After settlement efforts failed, the matter came regularly for trial on March 10, 2017. During three half-day sessions, the court heard testimony from David, David’s expert on real estate rental values, and Robert.

5.1. Stipulated Facts

To expedite the trial, David and Robert stipulated to several material facts, including:

- Undistributed trust property included the family home in Pasadena, several bank accounts, and the contents of safety deposit boxes.
- \$527,590 had already been distributed to Robert and David.
- Three bank accounts escheated to the state: Wells Fargo (C.D. \$67,746.66); Wells Fargo (Checking \$33,108.83); Nextrk Service (Check \$90.00).

- Robert has resided in the family home since Marjorie's death.
- Neither Robert nor David has paid rent to the trust with respect to the use of the family home.
- The co-trustees cannot administer the trust independently, including sale or distribution of the family home and distribution of bank account funds.
- The family home has not been listed for sale by or distributed to the co-trustees.
- Robert refused to use the original death certificate and continues to refuse to use the amended death certificate in order to administer the trust.

5.2. Robert's Concerns About Marjorie's Death Certificate

Immediately after Marjorie's death, and throughout 2009, Robert and David used the death certificate as needed to move money between bank accounts and make some disbursements. But Robert stopped using the certificate in late 2009.

Robert explained that he would not use the death certificate because, in his view, it was "false" and he understood that using a false death certificate could subject him to criminal prosecution. The "falsity" Robert was concerned with was the stated cause of death: aspiration pneumonia and chronic renal failure. Robert believed that diagnosis to be incorrect because, when he was at the hospital with Marjorie, he observed that one of the boards in the emergency room stated "dehydration" as a concern. He subsequently conducted his own investigation and

came to the conclusion that his mother's true cause of death was dehydration, which was not listed as a cause of death on the death certificate. Robert did not attempt to obtain an amendment to the death certificate, however. And he did not request an investigation into his mother's cause of death until December 2014 (California Medical Board) and May 2015 (Department of Justice)—well after David had filed his removal petition.

During the course of proceedings below, David obtained an amendment to the death certificate removing chronic renal failure as a cause of death and adding acute kidney failure and dehydration as causes of death. Robert refused to use the death certificate as amended because he still believed it was “false.” He explained: “This might be a technicality, but it doesn't say ‘severe dehydration,’ but I believe that's a significant difference.”

Further, “On the cause of death, I think that's – ‘acute kidney failure,’ or should it be ‘acute renal failure,’ I don't know if that's correct or not. But that might be a technicality also. Both of those are technicalities but overall, this could have a major cause of death [*sic*], but I'm concerned about the being dehydrated, death due to dehydration. I believe ... that's the cause of death.” Robert acknowledged that the amended death certificate listed dehydration as a cause of death. Nevertheless, he steadfastly asserted the view that using the death certificate, even as amended, would constitute use of a false document within the meaning of Penal Code section 115. At one point during his testimony, Robert even stated about the death certificate: “If you use this, it will give the appearance that she died of natural causes, and I believe that it could be a homicide.”

The first time Robert advised David that he was concerned about using the death certificate in order to administer the trust

was when he filed his petition for instructions—one year after David filed his removal petition.

5.3. Robert’s Refusal to Communicate with David

The last time Robert and David spoke to each other was in June 2011, during a conference call with other family members regarding real property in Iowa that was not part of the trust. But the communication breakdown began in January 2011.

David and Robert did not sell the family home immediately after their mother’s death. As noted, Robert lived in the family home without paying rent to the trust. David visited and stayed in the home infrequently.

The family home is located near the route of the Rose Parade, which is held annually on January 1. In the past, the family had invited friends and relatives to the house to view the parade and then have a buffet luncheon. David planned and prepared for the 2011 New Year’s Day event, bringing food, champagne, cake, and candy to the family home ahead of time. When David returned to the house on December 31 to put benches out on the parade route for the guests, Robert “came out of the house and said, ‘There won’t be any party. I’ve uninvited everyone and I’ve destroyed all of the food.’” David discovered that Robert “cut open a whole ham and threw it in the trash. He dumped a box of candy in the trash. Champagne, everything was opened and destroyed.”

A few days later, David wrote Robert a letter expressing his frustration with Robert’s actions and suggesting that Robert either begin renting the house from the trust or move elsewhere. Robert did not respond but, in anticipation of litigation, began keeping detailed records (using photographs and a spreadsheet)

of David's visits to the family home and his use of the garage at the family home to store his car when he traveled out of town.

The following year, David did not plan a party at the family home but used the benches so that he and his friends could watch the Rose Parade. David explained that when he and two of his friends entered the house briefly to use the bathroom, "Robert came running down from upstairs with a video camera or a hand-held camera and pointed it at my friends and said, 'What's your name? Why are you here? You don't have permission to be here. I want you to leave.'"

David repeatedly attempted to communicate with Robert by mail, by leaving notes at the family home, and by leaving voicemail messages for him. Robert never responded or attempted to communicate with David in any way. And when David visited the family home on occasion, Robert would go into his bedroom, lock the door, and remain silent when David attempted to talk to him through the door. For his part, Robert acknowledged that he did not speak to David at all, and confirmed that he did not advise David about damage to the family home and surrounding property resulting from a windstorm—which required repairs to the roof—or about a burglary at the family home, during which some of David's personal property had been stolen. Instead, he left a copy of the police report on the bed in David's childhood room and assumed David would observe the damage to the property and the loss of his personal property during his next visit to the family home.

Robert never explained to David why he suddenly cut off all communication with him. Nor did he explain why he refused to participate in administering the trust.

6. The Order and the Appeal

6.1. Robert's Petition for Instructions Regarding Use of the Death Certificate

The court concluded Robert's concerns about using his mother's death certificate were somewhat suspect, though not in bad faith. Specifically, the court found that Robert appeared to have a genuine concern, shortly after Marjorie died, that she may have been dehydrated when she was admitted to the hospital and that that condition was an indication she had been neglected at the residential care facility in which she had been living. This concern led Robert to request his mother's medical records, which Marjorie's treating physician did not immediately provide. Nevertheless, Robert did not report his concern to any law enforcement agency or relevant disciplinary body at or around the time of Marjorie's death. Instead, he waited until after David filed his removal petition—and more than six years after his mother's death—before contacting the Medical Board and the Justice Department to request that they investigate the true cause of his mother's death. On this point, the court said: "It is not credible that an adult child would not follow up on such serious concern until so many years later—when any wrongful conduct would have become necessarily more difficult to uncover. The Court does not accept as plausible that Robert was merely waiting for the doctor to provide his records. Even if the doctor should have provided those records sooner ... , Robert still waited far longer than makes any sense to pursue this concern."

Further, the court observed that even after David obtained an amended death certificate stating, as Robert believed, that the cause of Marjorie's death was not chronic renal failure but was instead acute kidney failure and dehydration, Robert still

claimed the death certificate was “false” and said he would not use it to administer the trust. For that reason, the court indicated it was “not convinced the death certificate in fact is the real reason Robert refuses to administer the trust.”

As to Robert’s stated belief that his mother may have been the victim of a homicide, the court noted no evidence to support his theory had been presented at trial.

Based on these factual findings, the court granted Robert’s petition for instructions in part, stating: “It is not unlawful for Robert or David to use the original or amended certificate in administering the Trust.” The court otherwise denied the petition for instructions.

6.2. David’s Petition for Robert’s Removal as Co-Trustee

The court concluded Robert had previously acted in his own self-interest rather than as fiduciary of the trust charged with the duty to act in the interest of all beneficiaries.

First, the court reiterated that David did not share Robert’s concerns about any perceived inaccuracies in Marjorie’s death certificate. That fact notwithstanding, David was willing to assist Robert in obtaining Marjorie’s medical records after her death. But as the court noted, even if the circumstances of Marjorie’s death were (for the sake of argument) in some way suspect, that point was “wholly irrelevant to the administration of the Trust.” In other words, Robert’s concerns about the cause of death did not excuse his failure to participate in administering the trust.

Second, the court found Robert “is incapable, for whatever reason, of communicating with David so as to be able to act with him going forward.” In particular, the court noted Robert had refused to communicate meaningfully with David since January

2011 and, as a result, the trust still held significant assets at the time of trial—more than eight years after Marjorie’s death. Robert also failed to advise David concerning their joint responsibilities regarding the family home, including roof repairs, wind damage, and a burglary. The communication breakdown had also resulted in bank accounts containing more than \$100,000 escheating to the state. On that specific point, the court commented that “the fact that this very unusual circumstance has occurred already itself more than demonstrates an abdication of responsibility” by Robert.

Accordingly, the court found Robert had failed to act in accordance with the fiduciary responsibilities imposed upon him as co-trustee under Probate Code⁴ sections 16003 and 16004, subdivision (a), and that such failures warranted his removal as co-trustee under section 15642, subdivision (b).

6.3. Robert’s Appeal

The court’s final order was entered on August 17, 2017, and served on August 23, 2017. Robert filed a motion to vacate the court’s order, which the court denied on October 11, 2017. Robert timely appeals. (Code Civ. Proc., § 904.1, subd. (a)(10); §§ 1304, subd. (a), 17200, subd. (b)(10).)

⁴ All undesignated statutory references are to the Probate Code.

DISCUSSION

Although Robert presents multiple challenges to the court's August 17, 2017 order, we consider only whether the court erred in removing Robert as a co-trustee of the trust. Robert's remaining arguments, as we explain, are forfeited due to his failure to provide any cogent legal analysis, are meritless, or both.

1. The court did not abuse its discretion by removing Robert as co-trustee.

Robert contends the court erred in removing him as a co-trustee of the trust. We disagree.

"The removal and substitution of a trustee is largely within the discretion of the trial court." (*Estate of Gilmaker* (1962) 57 Cal.2d 627, 633.) We therefore review the order granting David's request to remove Robert as a co-trustee of the trust for an abuse of discretion. Discretion is abused when, "in the circumstances of the case, viewed most favorably in support of the decision, the decision exceeds 'the bounds of reason.'" (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.) In applying the abuse of discretion standard, "[t]he trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious." (*Ibid.*)

The authority to remove a trustee is a power the court should not lightly exercise. (*Estate of Bixby* (1961) 55 Cal.2d 819, 826.) Whether a trustee should be removed depends upon the circumstances of the particular case. (*Jones v. Stubbs* (1955) 136 Cal.App.2d 490, 502.)

A trustee or a beneficiary of the trust may petition for the removal of a trustee. (§§ 15642, subd. (a), 17200, subds. (a), (b)(10).) The grounds for removal of a trustee by the court are set forth in section 15642, subdivision (b) and, as pertinent here, include the trustee's commission of a breach of trust, hostility or lack of cooperation among co-trustees that impairs the administration of the trust, a trustee's failure or refusal to act, or other good cause. (§ 15642, subd. (b)(1), (3), (4) & (9).) "A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust." (§ 16400.) Such duties include a duty of loyalty, i.e., to administer the trust solely in the interest of the beneficiaries (§ 16002), a duty to deal with all beneficiaries impartially in administering the trust (§ 16003), a duty to avoid conflicts of interest and not engage in self-dealing (§ 16004), and a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration (§ 16060). "The trustee shall administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument." (§ 16040, subd. (a).)

As we have already described, Robert has refused to communicate with David about the trust or about their obligations as co-trustees since early 2011. Robert also refuses to use Marjorie's death certificate—even the amended certificate David obtained during these proceedings—as necessary to administer the trust and for reasons that are not well founded. As a result, the necessary tax returns have not been filed, substantial undistributed assets remain in the trust, and more

than \$100,000 has escheated to the state. In short, David and Robert have been unable to work together on any aspect of the trust administration since 2011 and that circumstance has plainly impaired the administration of the trust. Given that Marjorie's death occurred 11 years ago, we have no difficulty concluding that the court properly removed Robert as a trustee due to his refusal to cooperate or communicate with David (§ 15642, subd. (b)(3)) and/or due to his own refusal to administer the trust (§ 15642, subd. (b)(4)).

Further, by living in the family home for the last 10 years without paying any rent to the trust, Robert has not acted in the best interest of the trust and *all* its beneficiaries. (§§ 16002, 16004.) Rather, as the court observed, Robert acted in his own self-interest and in breach of his duties as a co-trustee, warranting his removal from that position. (§ 15642, subd. (a).)

In short, we see no abuse of the court's discretion on the record before us. Robert's arguments to the contrary are unpersuasive.

Robert contends, for example, that "the court's impression that Robert had difficulty with his mother's passing even if a reasonable conclusion, is not based upon evidence." We presume Robert refers to the following passage in the court's order: "Some children have more difficulty than others with the passing of a parent and children have a right to close one chapter in their life and try to move on to the next. It was this Court's impression that Robert may have been having more difficulty in this regard than David." Based on our review of the court's order, it does not appear that the court's observation played a significant role in its decision to remove Robert as a co-trustee. Accordingly, even if we were to agree with Robert that the court's impression was

incorrect or unsubstantiated, we could not conclude, on this record, that Robert suffered any resulting prejudice. (Cal. Const., art. VI, § 13 [appellant must demonstrate error and resulting miscarriage of justice]; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800 [a miscarriage of justice exists only when “ ‘it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error’ ”].)

Additionally, Robert argues—without citation to relevant caselaw—that David also failed to use Marjorie’s death certificate to administer the trust and therefore “it is inequitable to reward David by making him sole trustee for the same inactivity that is cause for the Co-Trustee’s removal—failure to use the questioned death certificate.” Robert misses the point. As co-trustees, David and Robert were unable to act independently to administer the trust. Robert’s refusal to use the death certificate made it impossible for David to proceed.

Robert also contends the court’s finding that “Robert was incapable, for whatever reason, of communicating with David” is unwarranted. Robert asserts that he “chose to avoid conflict by communicating with David in writing.” He fails to direct our attention to any supporting evidence, however, and we therefore deem the point forfeited. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557 (*Yield Dynamics*) [an appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record].)

Finally, Robert contends the court erred in finding that his refusal to use his mother’s death certificate was unreasonable. In particular, he states that “the court made a determination that Robert would not have acted as trustee even if the death

certificate had been corrected. On this point, the court relied upon no supporting evidence as no admissible evidence could have been proffered to show what Robert would have done as trustee had the Petition for Instructions been granted when originally set for hearing in 2015.” We take him to mean that the court’s finding that Robert would not administer the trust in the future, which was one factor the court considered in determining whether to remove Robert as trustee, is unsupported by substantial evidence. We have two responses. First, as we have explained, the court relied on several different provisions of the Probate Code in granting the removal petition and we may affirm the court’s order on any ground supported by the record. Second, and in any event, substantial evidence supports the court’s finding. Robert was asked at trial whether he would use the amended death certificate to administer the estate:

“Q: Okay. Now, are you willing to use this death certificate, meaning the amended death certificate?

“A: No. I believe it’s still false.

“Q: And why do you believe it’s still false?

“A: The main reason that the coroner hasn’t – it never got to the coroner. If you use this, it will give the appearance that she died of natural causes, and I believe that it could be a homicide.”

As the court noted, none of the evidence present at trial supported Robert’s homicide claim. More to the point, Robert expressly stated he would not use the amended death certificate to administer the estate. Thus the court’s conclusion about Robert’s unwillingness to administer the estate going forward was not, as Robert contends, conjecture.

2. Robert's remaining arguments are meritless.

It is well established that “an appellant must present argument and authorities on each point to which error is asserted or else the issue is waived.” (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) Matters not properly raised or that lack adequate legal discussion will be deemed forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.) In short, an appellant must demonstrate prejudicial reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, supra*, 154 Cal.App.4th at pp. 556–557.)

Robert's remaining arguments fail to meet these basic requirements. Accordingly, we could deem them forfeited without further discussion. But as they are easily dismissed, we address them briefly.

Roberts second major argument heading states: “The court's finding that Robert should be surcharged for rental values is contrary to law and was not the arrangement of the co-trustees.” He goes on to present four reasons the award of fair rental value (pertaining to his residence in the family home for years without paying rent to the trust) was improper.

The problem with Robert's argument is that the court did not make a damages award relating to the rental value of the family home. In fact, the court specifically noted it could not make an award of rental damages because David failed to request such damages in his removal petition. Instead, the court stated “as of when David seeks approval of his accounting, David *may* be entitled to seek a surcharge against Robert in the amount of one half of the fair rental value from January 15, 2011” forward. Other issues remained to be considered, the court noted, such as offsets for the taxes, insurance, and repairs paid for by Robert

during that period. And the court explicitly “continue[d] the issue of responsibility for the amount of damages to the date of the hearing on approval of David’s final accounting. A party may not permissibly seek a surcharge until there has been a final accounting.” Robert’s challenge is, therefore, premature.

Robert’s final two arguments—headed “Court should have authorized use of death certificate or allowed DOJ to investigate cause of death” and “Award of attorney’s fees to David should be reversed”—lack citations to the record, presentation of relevant legal authority, and any sort of analysis. In any event, both contentions are meritless. As to the use of the death certificate, the court’s final order states: “Robert’s Petition for Instructions is granted in part, in that it is not unlawful for Robert or David to use the original or amended death certificate of Marjorie E. Welch with respect to administration of the trust.” This pronouncement appears to address directly Robert’s concern about using the death certificate. Further, and as to Robert’s final argument seeking reversal of the attorney’s fee award, the court did not make an award of attorney’s fees to David. The final order states: “David may file a separate petition for recovery of attorney’s fees, the approved amount of which may be paid by the Trust as a cost of administration prior to any distribution.” Again, Robert’s challenge is premature.

DISPOSITION

The order removing Robert Welch as co-trustee of the trust is affirmed. David Welch shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.