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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Estate of JOSE NATIVIDAD
CANO, Deceased.

2d Civil No. B281554
(Super. Ct. No. 56-2016-
00477977-PR-PW-OXN)
(Ventura County)

ANDREA CANO et al.,

Petitioners and Respondents,

v.

SUSAN PROETT,

Objector and Appellant.

Susan Proett appeals from an order removing her as trustee of the Natividad Cano Living Trust. She contends the probate court abused its discretion when it removed her as trustee because there was no good cause for her removal. She also contends the probate court was biased against her. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Jose Natividad Cano (decedent) executed the Natividad Cano Living Trust on December 12, 2012. Decedent was the sole settler and trustee of the trust. In his trust, he recites that he is married to Andrea Cano and has two children, named Alejandra Cano and Natalie Cano. The trust states that all property transferred to the trust is the separate property of decedent. It provides that his wife, Andrea,¹ shall “receive no portion of this trust estate except under very limited circumstances.” Instead, his daughters Alejandra and Natalie are designated as sole beneficiaries to receive “[t]he entire trust estate, including all real and personal property, and any additions from outside the trust estate” in equal shares.

At the time of his death, decedent was survived by his wife and two daughters, one of whom was a minor. The two successor trustees named in the trust declined to serve as trustees. Appellant, although not named in the trust, was nominated and agreed to serve as successor trustee.

More than one year later, Andrea offered a holographic will for probate. The will was purportedly drafted and signed by decedent two days before his death. The will nominates Andrea as his representative to execute any business transactions and transfers to Andrea “all the right[s] to my business, properties, vehicles, personal articles, pensions, bank accounts, recordings, royalties, corporations as long as the resources are used for the benefit of my two daughters Alejandra and Natalia Cano.”

¹ We refer to the Cano family members by their first names for ease of identification.

Appellant claimed the will was invalid due to fraud. She filed a will contest. In response, Andrea filed a brief objecting to appellant's standing to challenge the will and asserting claims that appellant did not file timely or proper accountings for the trust estate, and that she sold community property without the consent of the surviving spouse. Prior to a hearing on the will contest, the probate court issued notes for the hearing stating that appellant "has standing, subject to evidence in contravention" and stating further that "[t]his court has case management questions outside the question of standing" including about the sale of personal and real property.

At the hearing, appellant testified that she did not have contact with the trust beneficiaries and had received "constant" push back from Andrea. She testified that the initial corpus of the trust estate was more than \$400,000, which had been reduced by more than \$100,000 by the time of the hearing. The probate court appointed appellant as special administrator pendente lite and set the matter over for a post-mediation status conference. It also ordered appellant to prepare and submit to the court and counsel an informal accounting of the trust estate.

Two months later, Andrea filed a status conference report claiming that appellant failed to provide the required accounting and had moved forward with scheduling five depositions, including that of the minor beneficiary. At the hearing, the court stated "I'm not happy with [the] status of this case" and entered an order staying formal discovery pending the scheduled mediation.

One month later, Andrea filed a hearing brief identifying extraordinary "professional fees" in excess of \$38,000 and claimed appellant was still refusing to provide accounting

records. Then, four months later the probate court was informed that appellant had paid counsel over \$60,000. The court suspended the powers of appellant as trustee sua sponte and set a hearing date for a petition to remove appellant as trustee. The court appointed a professional fiduciary, Angelique Friend, as temporary trustee and ordered appellant to transfer the books and records to Friend by December 15, 2016.

On January 24, 2017, decedent's daughter Alejandra filed a petition to remove appellant, alleging failure to account, payment of "exorbitant" attorney fees, hostility toward the beneficiaries, and lack of cooperation. At the hearing on the petition, the court explained that it "suspended the trustee when an issue was raised as to the attorney fees paid by the trustee to the . . . to her counsel which was . . . seemed like extraordinary amounts. So the [c]ourt wanted to pause immediately to make sure that the interest of the beneficiaries [was] not being completely dissipated through litigation." In response to questions from the court, appellant testified that she spent approximately \$270,000 from trust assets since the beginning of her administration, including approximately \$60,000 in attorney's fees. The balance remaining in the trust was approximately \$126,000. At the conclusion of the hearing, the court ordered production of an updated ledger of attorney's fees to be filed under seal, stating that "I'm only focused on that. That was the basis for the interim suspension."

After receiving and reviewing the attorney's time records filed under seal, the probate court signed an order removing appellant as trustee and appointing Friend as successor trustee of the trust. In its order, the court noted that appellant had been directed by the court to appear in person at the removal

hearing “and provide accurate evidence of both opening trust corpus, current balance, and all funds spent to date on her attorney, including all corroborating documentation.” The order reflects that neither appellant nor her counsel brought the requested records to court, resulting in an order to deliver all attorney time records to court under seal.

The records were later produced and revealed that approximately \$80,000 in attorney’s fees and costs had been billed to appellant, and that counsel calculated that over \$65,000 of that amount was incurred contesting the holographic will. The court noted that the timesheets “fail to identify the subject matter of virtually all, if not all, of the dozens of reference letter[s] and e-mails. There is no identification of timekeeper on any of the charged services, with all time billed at \$350 per hour for all services, including typically paralegal services such as drafting ‘proofs of service’ and drafting ‘notices of deposition.’” (Italics omitted.) Appellant had “paid her attorney \$79,716.99, which sum includes no formal discovery conducted to date and only one very brief evidentiary hearing on the issue of standing.” Finally, the court stated “[t]he trust estate (or, alternatively, the allegedly trust-revoking probate estate) is for the sole benefit of decedent’s two young daughters, Alejandra and Natalie. Regardless of whether or not the trustee believes she is acting in good faith, the zealousness of trustee’s fight with decedent’s wife undermines [the] trust[s] purpose and provides good cause for removal.” (See Prob. Code, § 15642, subd. (b)(9).)

DISCUSSION

Appellant first contends that the probate court abused its discretion in removing her as trustee because she did nothing wrong. There was no abuse of discretion here.

Probate courts are charged with the duty to supervise and protect estates of deceased persons. In the exercise of its supervisory authority, a probate court is authorized ““to remove an executor when, in its discretion, such [a] step is necessary for the protection of the estate; and that power is not to be interfered with by the appellate court, unless there has been a clear abuse of that discretion.” [Citation.]” (*Estate of Hammer* (1993) 19 Cal.App.4th 1621, 1633-1634.) Thus, we review the probate court’s order for an abuse of discretion.

In order to reverse, a reviewing court must find that the probate court exceeded the bounds of reason, and that the resulting error was prejudicial, amounting to a miscarriage of justice. (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448-1449.) We will not substitute our judgment for that of the probate court, even if we would have ruled differently. “[T]he discretion is that of the trial court, and [a reviewing court] will only interfere with its ruling if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge reasonably could have reached the challenged result. [Citation.]” (*Estate of Billings* (1991) 228 Cal.App.3d 426, 430.)

In support of its argument that the probate court abused its discretion here, appellant cites only two legal authorities, without analysis or discussion. Appellant quotes Probate Code section 15642, which authorizes a probate court to remove a trustee for “good cause.” (Prob. Code, § 15642, subd. (b)(9).) Appellant then cites *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, for the principle that a probate court “cannot abuse its discretion, on a whim, to remove the trustee.”

It is axiomatic that a brief must contain reasoned argument and legal authority to support its contentions or the court may treat the claim as waived. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 (*Benach*).) Appellant fails to meet this requirement.

But even if we consider appellant's contention on its merits, the claim fails. Appellant apparently contends that the probate court had no basis for its ruling, and that it acted "on a whim." But the record reveals otherwise. Here, the probate court conducted a series of hearings in which it focused on the depletion of trust assets intended to benefit decedent's young daughters through unnecessary and excessive expenditures on attorney's fees.

In an earlier hearing, the probate court expressed its concern when it suspended appellant's powers as a trustee *sua sponte*.² Subsequently, the court requested testimony and documentation supporting the expenditures on attorney's fees. Appellant appeared at the hearing without the requested documents and was unable to provide reliable information about the extent of trust assets or her use of trust funds. When attorney timesheets were finally produced, they were vague and incomplete. The court was rightly concerned that there would be nothing left for decedent's young daughters if appellant were allowed to continue as trustee. Here the probate court acted reasonably to protect the estate for the benefit of decedent's two daughters.

Appellant next contends that the order removing her as trustee must be reversed because of the probate court's "obvious bias against the position of [appellant] and her counsel."

² No appeal has been taken from that order.

Appellant devotes a mere six sentences to this argument, and cites no legal authority to support her contention. We consider the claim waived. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Benach, supra*, 149 Cal.App.4th at p. 852.)

Finally, we decline to address arguments raised by appellant for the first time in her reply brief. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295.) “As a general rule, points not addressed until a reply brief will not be considered unless good cause is shown for failing to address them earlier. [Citation.] None has been shown here. We treat the issue as abandoned.” (*Benach, supra*, 149 Cal.App.4th at p. 852, fn. 10.)

DISPOSITION

The judgment (March 2, 2017, order) is affirmed.
Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Glen M. Reiser, Judge
Superior Court County of Ventura

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and Appellant.

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for Petitioners and Respondents Andrea Cano and Alejandra
Cano.

Hathaway Perrett, Webster, Powers, Chrisman &
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Cano as Guardian ad Litem.

Law Offices of David A. Esquibias, David A.
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Friend.