Filed 8/23/16 Garrett v. Wood CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CAMILLE GARRETT, Plaintiff and Appellant, v. DOROTHY WOOD et al., Defendants and Respondents.	B264726 (Los Angeles County Super. Ct. Nos. NP014876 (Probate) & NP015097 (Trust))

APPEAL from an order of the Superior Court of Los Angeles County, Maria Stratton, Judge. Dismissed.

Thomas Y. Barclay for Plaintiff and Appellant.

Velasco Law Group, Paul D. Velasco, Richard J. Radcliffe and Dana M. Cannon for Defendants and Respondents.

Appellant Camille Garrett challenges the denial of her petition to approve a settlement of a will contest and dispute over the validity of trust documents. We conclude the order is not appealable, and dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The real property that lies at the heart of this dispute is the Long Beach residence of the late Phyllis Priestley.[1] When Phyllis's husband, Russ Priestley, died in February 2006, his survivors included two adult children from another relationship, George McGill and Valerie Husbands. The record contains no indication that Russ left a will or instructions concerning his property.

Phyllis lived in the Long Beach residence until her death at age 77 in February 2012. She predeceased her brother, James Mitchell; step-children, George and Valerie; caregiver, respondent Dorothy Wood; and Russ's niece, appellant Camille Garrett.

Between October 2006 and December 2010, Phyllis signed a number of estate-planning documents. Several are disputed, and the following descriptions are not intended to resolve those issues.

Holographic Will. This handwritten document states: "10/16/06 [¶] This is my last & only will. Books for cash accts are in (teacart—drawer—RH) joint tenancy. My regular cking acct at Washington Mutual Acct # 877-0310-551. Camille Garrett is the beneficiary of all accounts. Reconveyance showing the house is paid for is in safety deposit box envelope in metal box (in front) in stairwell closet. I'm asking Capi (in case of my death) to send $10,000 ea to George McGill and Valerie Husbands. My husband died intestate on 2/11/06. Death certificate in black wicker 'in basket.' [¶] [Signed] Phyllis E. Priestley [¶] This is an original will—handle w/care."

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[1] For the sake of clarity and convenience, we refer to the decedents and the interested persons by their first names. The record contains two spellings for decedents' surname—"Priestley" and "Priestly"—and because the former appears to be correct, we have adopted it in the opinion.

"Phyllis Priestley Revocable Trust (Dated April 21, 2010)." This 22-page document, prepared by attorney Susan Ann Barry, was notarized and signed by Phyllis, as trustor and trustee, on April 21, 2010. It also was signed by Camille as co-trustee. It named Dorothy as successor trustee in the event either trustee was unavailable. Upon Phyllis's death, the trust estate—the property listed in Schedule A (the Long Beach residence, a Chase Bank checking account, and a Wachovia/Wells Fargo checking and certificate of deposit account) and any additional personal property listed by Phyllis—was to be distributed to Camille, and if she did not survive, then to Lee Andrea Anderson and Deana Nichole Oddo in equal shares, or the whole to the survivor.

"Last Will and Testament of Phyllis Priestley." Four months after creating her revocable trust, Phyllis signed a six-page will, which was witnessed by Louisa P. Solis and Karen Y. Ross on August 25, 2010. By this will, Phyllis, "a widow" with "no children, living or deceased," revoked all former wills and codicils, and bequeathed all of her real and personal property to her "dear friend, Dorothy L. Wood," and, if Dorothy did not survive, then to Dorothy's son, Steven E. Hansen. The will named Dorothy as executor, and Steven as her successor, and directed the executor to sell the estate "[w]ith or without notice," "at public or private sale," as the executor deemed "advisable, subject only to such confirmations of court as m[a]y be required by law[.]"

"Revocation of the Phyllis Priestley Revocable Trust, Dated April 21, 2010." One month after she executed her will, Phyllis revoked her trust through a single page document that was signed and notarized in Nevada on September 22, 2010. It stated: "I, Phyllis Priestley, a resident of Los Angeles County, California, give notice of revocation and hereby revoke in its entirety The Phyllis Priestley Revocable Trust, dated April 21, 2010. [¶] All power and authority granted to any trustee, co-trustee, or successor trustee under The Phyllis Priestley Revocable Trust, dated April 21, 2010, by me are hereby revoked, effective immediately."

Quitclaim Deed. Six days after revoking her trust, Phyllis executed a quitclaim deed bearing the caption: "THIS CONVEYANCE TRANSFERS AN INTEREST FROM A REVOCABLE TRUST TO THE TRUSTOR OF THE TRUST [¶] R&T

11930." This document, which was signed and notarized on September 28, 2010, transferred the trust's interest in the Long Beach residence to "Phyllis Priestly, an unmarried woman."

"First Codicil to Last Will and Testament of Phyllis Priestley." This two-page document was signed by Phyllis and witnessed by Sandra H. Davidson and Kyrisha Robinson on December 24, 2010. It provided her "long-time friend, David E. Rundquist . . . the 'ostentatious' sum of Ten Thousand Dollars ($10,000)."

Shortly after Phyllis's death in February 2012, Dorothy initiated a probate action, seeking to be appointed as executor of the August 2010 will and the December 2010 codicil. (No. NP014876, the probate action.) Dorothy listed herself as "Executor and Beneficiary," her son Steven as "Successor Executor," and Phyllis's friend David as "Beneficiary." Dorothy did not mention Phyllis's brother (James), step-children (George and Valerie), or Camille.

The court appointed Christina Erickson-Taube as special administrator for Phyllis's estate, and appointed Pamela Schurr as the attorney for the special administrator. The court directed Schurr to locate the heirs of Phyllis and Russ.

In May 2012, Camille learned about the probate action and filed a contest to the August 2010 will and December 2010 codicil. Claiming that Phyllis had been subjected to undue influence by Dorothy, Camille filed a separate action for "Determination of Validity of Trust; Determination of Trust Assets; Transfer of Trust Assets; and Appointment of Successor Trustee." (No. NP015097, trust action.)

The court in the probate action ordered Erickson-Taube to sell Phyllis's residence. While that sale was pending, Camille mediated her dispute with Dorothy and Steven in December 2012. At the conclusion of that mediation, Camille, Dorothy, and Steven executed a settlement and mutual release with the following terms:

- Within 10 days, Dorothy and Steven would petition the court in the probate action for approval of the settlement agreement.
- Camille would dismiss her will contest and trust action, with prejudice, and make no objection to the August 2010 will, the appointment of Dorothy as

executor, or any application to halt the special administrator's sale of the residence.

- Dorothy would exercise her best efforts to sell Phyllis's residence, and would pay Camille $110,000 from the sale proceeds.
- The parties would waive their attorney fees and costs.
- Dorothy and Steven would receive specific items from the estate —an automobile, tool box, coffee table, love seat, computer, cedar chest, oriental divider, and television—and Camille would select other items from the estate, subject to the current administrator's approval.

Pursuant to the settlement agreement, Dorothy and Steven petitioned the court in the probate action to (1) approve the settlement agreement, (2) submit the August 2010 will and December 2010 codicil for probate, (3) appoint Dorothy as executor, (4) discharge the special administrator, and (5) vacate the trial date for Camille's will contest.

Before that petition was heard, James filed a will contest in March 2013, challenging the August 2010 will and December 2010 codicil. Two months later, Valerie joined his contest. Valerie argued that she and her brother George were entitled to a portion of their father's estate.

The court (Judge David Cowan) considered the petition to approve the settlement agreement in August 2013. It held that because the interests of James, Valerie, and George were undetermined, it was not possible to approve a settlement that did not take their interests into account. It denied the petition without prejudice.

Three months later, Camille sought approval of the same settlement agreement. James and Valerie opposed her petition, and Dorothy and Steven filed a demurrer. The court (Judge Maria Stratton) denied Camille's petition, with prejudice, on February 3, 2015. This appeal followed.

DISCUSSION

Disposition of the appeal turns on a jurisdictional issue, the existence of an appealable order, which was not briefed. On July 13, 2016, we sent a letter pursuant to Government Code section 68081 requesting supplemental briefing on the application of Probate Code section 1300[2] to this appeal with regard to the existence of an appealable order. We received the parties' respective supplemental letter briefs on July 22, 2016, and the matter was submitted.

As in all cases, appeals in probate actions are subject to the one final judgment rule. "In California, the right to appeal is governed solely by statute and, except as provided by the Legislature, the appellate courts have no jurisdiction to entertain appeals. An appealable judgment or order is essential to appellate jurisdiction, and the court, on its own motion, must dismiss an appeal from a nonappealable order. [Citation.] The primary statutory basis for appealability in civil matters is limited to the judgments and orders described in section 904.1 of the Code of Civil Procedure, which essentially codifies the 'one final judgment rule' and provides that only final judgments are appealable. The one final judgment rule is based on the theory that piecemeal appeals are oppressive and costly, and that optimal appellate review is achieved by allowing appeals only after the entire action is resolved in the trial court. Ordinarily, there can be only one final judgment in an action and that judgment must dispose of all the causes of action pending between the parties. [Citation.] It is the substance and effect of the court's order or judgment and not the label that determines whether or not it is appealable. [Citation.]" (*Art Movers, Inc. v. Ni West, Inc*. (1992) 3 Cal.App.4th 640, 645.)

In probate matters, the only appealable orders are those enumerated in the Probate Code. (See § 1300 et seq., *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 754 and cases cited in 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 203, p. 279 ["Prob.C. 1300 et seq. list appealable orders in probate proceedings. The statutory list is much narrower in scope than C.C.P. 904.1 (supra, § 85), and it has long been settled that

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[2] All undesignated statutory references are to the Probate Code.

the statutory list is exclusive. Thus, there is no right to appeal from orders in probate except those specified in the Probate Code"].)

The subject order denying approval of a settlement agreement is not among the orders designated as appealable in the Probate Code. Camille argues the order's "legal effect, rather than its form, determines its appealability," citing *Estate of Miramontes-Najera*, *supra*, 118 Cal.App.4th at p. 755. In that case, a surviving spouse appealed from a section 5021 order denying her petition to set aside her late husband's nonconsensual transfers of community property to the bank accounts of third parties. The respondents argued the section 5021 order was not appealable. The appellate court disagreed, analogizing the order to a determination of "'heirship, succession, entitlement, or the persons to whom distribution should be made,'" which is appealable under section 1303, subdivision (f). (118 Cal.App.4th at p. 755.) In addition, because there was nothing left for "judicial consideration concerning the accounts, the orders are the only judicial rulings regarding the accounts, and there is no other avenue for appellate review," it had "all the earmarks of a final judgment." (*Ibid.*)

In her civil case information statement, Camille stated that her appeal was taken from a judgment or order which disposed of all causes of action between the parties. If that were true, the jurisdictional issue would be resolved in her favor. However, we have found no judgment or order fitting that description in the record.

Camille's reliance on *Estate of Miramontes-Najera*, *supra*, 118 Cal.App.4th 750 is misplaced. Contrary to her description of the settlement agreement, the agreement did not determine "heirship, succession, entitlement, or the persons to whom distribution should be made" (§ 1303, subd. (f)), or direct the "distribution of property" (§ 1303, subd. (g)). Because the settlement agreement did not consider the interests of James, Valerie, and George, there was no final resolution of all disputed issues. There will be an opportunity for appellate review when a final judgment or other appealable order is issued, but there is no statutory basis for appellate review at this point.

We also note that even if the February 3, 2015 ruling were treated as an order sustaining a demurrer, it would not be appealable. (*Estate of Stierlen* (1926) 199 Cal.

140, 142.) No request was made to treat the appeal as a petition for writ of mandate, which we decline to do on our own motion. Because the lack of an appealable order is a jurisdictional defect, we are required to dismiss the appeal.

DISPOSITION

The appeal is dismissed. Respondents are entitled to their costs on appeal.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.