

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Conservatorship of the Person and
Estate of SUSAN Q. GALERA.

B272328

(Los Angeles County
Super. Ct. No. BP167824)

ERIK CABRAL,

Petitioner and Respondent,

v.

RANDOLPH RAMIREZ,

Objector and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.
William Barry, Judge. Reversed and remanded with directions.

Klapach & Klapach, Joseph S. Klapach; Valensi Rose, Brad C.
Kuenning for Objector and Appellant.

Stevenson Law Office, W. Todd Stevenson, Aaron J. Gigliotti for
Petitioner and Respondent.

Randolph Ramirez (Randy)¹ appeals from the probate court's orders made on the petition filed by respondent Erik Cabral (Erik), appointing a conservator of the person and a conservator of the estate of Susan Q. Galera (Susan). Randy contends the probate court erred in making these orders without allowing an evidentiary hearing. We agree and reverse.

BACKGROUND

In 1976, Susan met Nelson Ramirez (Nelson), Randy's father; the two began a short-term, romantic relationship. In the 1990's, the couple reunited and were in a relationship until Nelson's death in July 2015.

In March 2014, Susan retained attorney Rozsa Gyene (Gyene) to create an estate plan for her, including a living trust, a pour over will, and durable powers of attorney for financial affairs and for health care. In her durable power of attorney for financial affairs, Susan nominated Nelson, and then Randy (if Nelson refused or was unable to act), as her conservator. Susan instructed Gyene to prepare her living trust and to appoint Nelson as trustee, and in the event of Nelson's death, then Randy as successor trustee, giving the trustee control over her affairs if she became disabled because "she did not trust her immediate family and was concerned they might attempt to misappropriate her property in the event of her death or disability." At the time Gyene prepared the documents, Susan "clearly appeared to be of sound mind, and able to understand and manage her own business and financial matters."

In April 2015, Susan was diagnosed with progressive dementia. Nelson was then caring for Susan. That same month, Susan's sister, Estrella Cabral

¹ We refer to the parties and their family members by their first names in order to avoid any confusion as they share the same last names. We mean no disrespect.

(Estrella), contacted Adult Protective Services (APS) and accused Nelson of elder abuse. APS investigated the claim and concluded no abuse had occurred. On April 20, 2015, Susan sent a handwritten note to the social worker confirming that her March 2014 estate plan which Gyene had prepared correctly stated her intentions.²

Following Nelson's death, Randy assumed the role as trustee of Susan's living trust. In August 2015, he hired a home care aide to assist Susan four hours each day with her everyday activities. In January 2016, after Susan's health further declined, Randy increased the hours of care to 24 hours a day, seven days a week.

According to Randy, Susan does not have a close relationship with her sister, Estrella, or with her nephew, Erik. One of the reasons for the strained relationship was the sisters had a dispute over "rents, expenses, and profits" associated with an apartment building they jointly owned in North Hollywood. Shortly after assuming the position of trustee, Randy hired real estate attorney Anthony Marinaccio to file a lawsuit in order to resolve the issues involving the North Hollywood building.

Randy claims his relationship with Susan's family became tense after Susan's family members learned of the legal action, and they "began to take matters into their own hands." On September 4, 2015, Randy discovered that \$33,000 of Susan's savings was no longer in her accounts. On September 7, 2015, Randy sent an e-mail to Estrella stating he believed she was involved

² The April 20, 2015 note reads: "Be it known to all that I Susan Q. Galera, stands [*sic*] FIRM on the details of my "Living Trust" prepared on March 18, 2014. I do not have any plans or intentions to change or amend any contents thereto. If any legal issues arise, please contact my lawyers Rozsa Gyene I am therefore to stay in the "AS IS" condition of my Living Trust with my signature affixed below."

with taking the money, and within 24 hours the money was returned to Randy's real estate attorney.

Susan's family denies their relationship with Susan is strained. According to Erik, Susan maintained a close and meaningful relationship with the family, celebrating birthdays and holidays, and enjoying dining, walking and shopping together. However, after Nelson's passing, they noticed Randy took "alarming actions" to control Susan's life, including restricting Susan's financial resources and isolating her from friends and family. Erik disputes Randy's accusation that Estrella took \$33,000 from Susan. Erik claims when Susan learned Randy had added his name to her bank accounts, she withdrew her money because she wanted to make sure Randy did not have access to her money. Erik further claims that as a result of Randy's "aggressive and inappropriate advances," the family sought legal assistance and confronted Randy with legal documents showing that Susan had changed her estate plan so that her family would be in charge of her medical and financial needs.

On October 22, 2015, Erik filed a verified petition for his appointment as conservator of the person and of the estate of Susan (the Petition). Erik attached as exhibits a durable power of attorney for financial management appointing Estrella and Erik (or the successor) as holders of those powers, and a durable power of attorney for healthcare, designating first Estrella and then Erik as holders of health care powers for her. The documents were signed by Susan and two witnesses, Luz Bragado and Evilia Liganor, and dated July 19, 2014. Susan also signed a declaration, dated October 10, 2015, "reaffirming" her July 19, 2014 nomination of Estrella and Erik to serve as co-conservators of her estate. On the same date, Estrella signed a declaration

stating she nominated Erik to serve as conservator of Susan's person and estate.

On January 25, 2016, Randy filed a document entitled "Opposition and Objections to Petition," arguing the Petition was "nothing more than an attempt by Susan's relatives, the Cabral family, from whom Susan was largely estranged for many years, to gain control of and exploit for their own purposes Susan's financial assets." He set out facts and circumstances which he argued "call[ed] into serious question" whether the financial and health care powers of attorney attached to the Petition were genuine. Randy also submitted declarations from Gyene and Marinaccio supporting his contentions. Gyene declared that Susan had told her she wanted "[Nelson and Randy] to have control of her affairs if she became disabled, rather than any members of her family." Marinaccio declared he was the attorney who received the \$33,000 that had been removed from Susan's bank account.

On March 16, 2016, Randy filed a second "Opposition and Objections," recounting his attorney's unsuccessful efforts to take depositions which he claimed were "pertinent and necessary" to the probate court's decision, and included a three-page listing of facts and circumstances, entitled "Chronology of Events Demonstrating That the Purported July 19, 2014, Powers of Attorney are Fraudulent," detailing why in his view the July 19, 2014 powers of attorney attached to Erik's Petition were likely "fraudulent."

On January 29 and March 17, 2016, Erik filed verified supplemental briefs and exhibits in support of his Petition.

On March 18, 2016, the probate court heard the Petition. During the proceedings, Randy's counsel argued that the powers of attorney attached to the Petition were "fraudulent" and he sought discovery on that issue. He also argued that appointing Erik as conservator was "inappropriate," as Erik's

family had removed \$33,000 from Susan's account, and only returned it after they were told the matter had been reported to the police. Randy's counsel also twice requested an evidentiary hearing to resolve the factual disputes he had set out in his earlier-filed objection documents. The probate court denied these requests.

At the conclusion of the hearing, the probate court granted the Petition in part, appointing Erik as conservator of Susan's person and giving him control of medical decisions for her. The court reasoned Erik was the appropriate person to appoint because he resided locally and it was better to have someone local to manage day-to-day affairs.³ The probate court then continued the matter of appointment of a conservator of the estate and requested names from the parties of qualified persons to serve. The probate court stated its intention to appoint a different person as conservator of Susan's estate was to avoid any conflict between the person who manages the money and the person who manages the day-to-day activities.⁴

On April 19, 2016, the court appointed licensed professional Maya Rubin as conservator of Susan's estate. At the hearing, Randy's counsel objected to the appointment of a conservator of the estate stating "there [was] no need for it," but did approve of the person selected by the probate court, which he had nominated.

³ Randy lives in Connecticut.

⁴ When the probate court stated it would appoint a different person as conservator of the estate, Randy's counsel said he would support a third party to serve as conservator of the estate as it would avoid the "disastrous" situation of having Erik ask Randy for money for Susan, and instead "everybody is assured that [Susan is] being well taken care of."

On May 17, 2016, Randy filed a notice of appeal.⁵

CONTENTIONS

Randy contends the probate court committed reversible error by denying his requests for an evidentiary hearing, arguing the “Probate Code prohibits trial of factual issues by declaration or petition alone in contested probate proceedings.” He also contends that in deciding who will serve as conservator for Susan’s person and estate, the probate court should have determined which of the health care directives and powers of attorney concerning Susan were valid, and then enforce Susan’s wishes. The probate court instead chose Erik as conservator of the person of Susan due to his location, and appointed a private professional fiduciary as conservator of the estate. Randy contends these actions violated settled law and improperly substituted the court’s views for Susan’s.

DISCUSSION

I. Standard of Review

The parties contend we review de novo an order denying a request for an evidentiary hearing. However, we agree with the view of our colleagues in *Estate of Lensch* (2009) 177 Cal.App.4th 667, that an order denying a request for an evidentiary hearing is reviewed for abuse of discretion. (*Id.* at p. 676.) In making that determination, we apply “[t]he appropriate test for abuse of

⁵ Orders appointing conservators are appealable. (Prob. Code, § 1301, subd. (a); *Conservatorship of Sanderson* (1980) 106 Cal.App.3d 611, 613, fn. 1 [“An order appointing a conservator is an appealable order.”].) We liberally construe the Notice of Appeal “from the trial court’s Minute Order, dated April 19, 2016” and from “the trial court’s Minute Order, dated March 18, 2016,” as appeals from the Orders Appointing a Probate Conservator of the Estate and Appointing Probate Conservator of the Person, respectively. (Cal. Rules of Court, rule 8.100(a)(2).)

discretion [which] is whether the trial court exceeded the bounds of reason. [Citations.]” (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449.)

II. The Probate Court Abused Its Discretion by Denying the Requested Evidentiary Hearing on the Contested Petition

If, on a petition to nominate a conservator, the proceeding is uncontested, the probate court may decide the petition on the papers. (Prob. Code, § 1022 [“An affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code.”].) However, if the probate proceeding is contested, a party has the right to an evidentiary hearing. (See *Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1308–1310 [probate court erred in failing to conduct evidentiary hearing]; *Estate of Lensch, supra*, 177 Cal.App.4th at pp. 675–677 [same].) But this right is not absolute. “[W]here the parties do not object to the use of affidavits in evidence, and where both parties adopt that means of supporting their positions, the parties cannot question the propriety of the procedure on appeal.” (*Estate of Nicholas* (1986) 177 Cal.App.3d 1071, 1088.)

Randy contends the written objections he filed prior to the hearing on Erik’s Petition, and his oral objections at that hearing, compel reversal of the probate court’s orders and require that an evidentiary hearing be held. He further emphasizes he contested the facts presented by Erik; he appropriately brought the existence of the factual contest to the attention of the probate court; and that the court committed reversible error in denying him an evidentiary hearing “in light of the myriad of disputed facts presented by this case.”

Erik errs in his contrary contention that the probate court was “well within its power” to deny an evidentiary hearing because “[n]either party objected to the use of declarations at any time during the proceeding, either

in writing or orally.” Erik’s contention fails to give proper recognition to Randy’s two oral requests at the March 18 proceedings for an evidentiary hearing, as well as to Randy’s written objections filed prior to the hearing, including the attachments to Randy’s March 16, 2016 filing. Randy clearly made multiple challenges to the validity of the powers of attorney upon which Erik relies, arguing the documents appeared to be “highly questionable” and “fraudulent.” One of Randy’s attachments is entitled “Chronology of Events Demonstrating That the Purported July 19, 2014, Powers of Attorney are Fraudulent.” This document contains 14 numbered paragraphs explaining Randy’s objections to the evidence offered by Erik in support of his Petition. In addition to the oral objections at the hearing and the written submissions filed prior to it, Randy’s counsel sought discovery on “the nominations of conservators that are attached to the conservatorship petition.”

The record discussed above demonstrates that Randy did not forfeit his right to an evidentiary hearing, and that it was an abuse of discretion for the probate court to deny Randy’s request for such a hearing on the contested petition.⁶

⁶ We express no opinion on the merits of the contested proceeding to be held or on the likelihood of Randy proving his case. The probate court should exercise its discretion in resolving Randy’s request for discovery.

DISPOSITION

We reverse the orders appointing a conservator of the person and of the estate and direct the probate court to hold an evidentiary hearing on the contested petition to appoint the conservator of the person and of the estate of Susan Q. Galera. Appellant shall be entitled to his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

GOODMAN, J.*

We concur:

CHAVEZ, Acting P.J.

HOFFSTADT, J.

* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.