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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Estate of ANTHONY ARIAS,
Deceased.

B264101

REBECCA ARIAS,

(Los Angeles County
Super. Ct. No. BP123906)

Petitioner and Appellant,

v.

LUPE KARDOULIAS,

Objector and Respondent.

APPEAL from a judgment of the Superior Court of
Los Angeles County, Lesley C. Green, Judge. Affirmed.

Rebecca C. Arias, in pro. per., for Petitioner and Appellant.

Law Office of Paul H. Nankivell, II and Paul H.
Nankivell, II for Objector and Respondent.

Appellant Rebecca Arias (Rebecca) appeals from a judgment entered after a court trial. Because the record, which does not contain a complete reporter's transcript, is inadequate to assess her contentions, we affirm the judgment.

BACKGROUND

Rebecca has elected to proceed with this appeal on the clerk's transcript, without a reporter's transcript of the trial or an agreed or settled statement, and we therefore take the relevant facts from the probate court's statement of decision.¹ (*Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.)

Anthony Arias had three daughters: Rebecca, Lupe Kardoulis, and Antoinette Oval.² Anthony died in July 2010. One month later, in August 2010, Rebecca filed a petition to administer her father's estate. Lupe then filed a petition to probate Anthony's will, to which Rebecca responded by contesting the will on the grounds Anthony lacked testamentary capacity and the will was made as a result of Lupe's undue influence. Then, in December 2010, Antoinette weighed in with a petition under Probate Code section 850 to determine interests in real and personal property, including "various bank accounts and annuities" which allegedly were being wrongfully held by Lupe.

The probate court consolidated Rebecca's will contest and Antoinette's petition, and a court trial took place in November and December 2014. In March 2015, the court issued its 25-page

¹ Rebecca's "second" motion to augment the record or, in the alternative to take judicial notice of exhibits, filed on May 10, 2016, is denied.

² To avoid confusion, we refer to the parties by their first names.

statement of decision containing detailed findings. According to that statement of decision, the evidence at trial was “directed at [Anthony’s] capacity as of December 12, 2009, when the challenged will and grant deeds” to three pieces of real property were signed. In support of its ultimate finding that Anthony had testamentary capacity, the court cited medical records, Lupe’s testimony, and the testimony of third party witnesses, all of whom indicated that Anthony had the requisite testamentary capacity. The court found evidence to the contrary, that Anthony lacked mental capacity, not credible. For example, about Antoinette’s testimony that her father was in a “vegetative state, from and after January 2006[,]” the court had this to say: “Antoinette’s testimony was so replete with exaggeration, testimony contrary to her prior sworn testimony and affidavit and contrary to other, more objective evidence as to make her testimony unreliable. It is apparent that Antoinette will testify in any manner which supports her current position.”

The probate court thus found that Rebecca “failed to carry her burden of overcoming the presumption of capacity for the will executed by [Anthony] on December 12, 2009.” Anthony had the requisite capacity to make the will and grant deeds and to designate Lupe as the beneficiary of annuities and bank accounts. The court further found that Rebecca and Antoinette failed “to establish that the result of the will and grant deeds was inequitable or contrary to [Anthony’s] intent, and as such, Rebecca and Antoinette failed to establish the elements of an undue influence analysis.” As to Rebecca, Anthony intentionally and knowingly disinherited her, in part because he had already distributed property to her before his death in order to settle a lawsuit she brought against him. As to Antoinette, she

disclaimed her inheritance in favor of her daughter. Based on these findings, the court approved Lupe's petition for probate and denied Rebecca's petition for administration of the estate without prejudice.

DISCUSSION

On appeal, Rebecca contends that Anthony lacked testamentary capacity when he signed his will and that he signed it as a result of Lupe's undue influence. Rebecca supports her contentions with just the clerk's transcript (which does not even contain all minute orders from trial) and reporter's transcripts containing less than two days of what appears to have been a lengthy trial, after which the probate court issued a meticulous statement of decision. Such a judgment or order of a lower court is "presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; see also *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant, Rebecca, bears the burden of affirmatively showing prejudicial error and, to satisfy this burden, she must provide an adequate record to assess error. (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324.) "Where no reporter's transcript [or settled statement] has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct as to all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992; see also Cal. Rules of Court, rules 8.130, 8.134, 8.137.)

Rebecca has tried to overcome this presumption and to satisfy her burden on appeal by augmenting the record with

partial reporter's transcripts of the testimony of witnesses favorable to her, omitting evidence favorable to the prevailing party, Lupe. Rebecca, for example, submitted the testimony of Marisol Rodriguez, who testified that Anthony was so impaired he could not feed himself, and the testimony of Dr. Joanne Hamilton, who opined that Anthony lacked mental capacity as early as February 2006. The probate court, however, found that Rodriguez was "prepared to give exaggerated or false testimony" for Antoinette; hence, the court "did not find [Rodriguez] to be a credible witness." The court similarly discounted Dr. Hamilton's testimony as "not reasonably based on the medical records as none of them indicated [Anthony] had impaired memory or cognitive function in 2006 and 2007." Such incomplete testimony is insufficient to demonstrate error and to otherwise satisfy Rebecca's burden on appeal.

But even if Rebecca had provided the entire reporter's transcript of the trial or an otherwise adequate record, the applicable standard of review would require us to reject Rebecca's contentions. We review a trial court's findings of fact under the substantial evidence standard, while the trial court's resolution of a question of law is subject to independent review. (*Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935-936; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658.) We do not reweigh the evidence and reevaluate the credibility of witnesses. (*Axis Surplus Ins. Co. v. Reinoso* (2012) 208 Cal.App.4th 181, 189.) Rebecca's contentions on appeal, however, amount to an improper request that we reevaluate the probate court's credibility findings. The standard of review precludes such a reweighing of

the evidence and we therefore conclude that even if the record were adequate, the judgment must be affirmed.

DISPOSITION

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

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DHANIDINA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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