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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person
and Estate of
BARBARA L. ABRAMSON.

B276464

Los Angeles County
Super. Ct. No. BP160051

MORRIS S. GETZELS,

Petitioner and Appellant,

v.

CARIN BAER et al.,
as Coconservators, etc.,

Objectors and Respondents.

APPEAL from orders of the Superior Court of Los Angeles County, William P. Barry, Judge. Affirmed.

Morris S. Getzels, in pro. per., for Petitioner and Appellant.

Mitchell Silberberg & Knupp LLP and Seth W. Krasilovsky
for Objectors and Respondents.

Morris S. Getzels appeals in propria persona from two trial court orders, the first denying his petition for attorney fees and costs and ordering him to disgorge \$10,000 already received, and the second denying his motion to vacate the disgorgement order. We affirm.

BACKGROUND

This appeal arises from a family dispute over the conservatorship of the person and estate of Barbara L. Abramson, during which the probate court denied sole practitioner Getzels's petition for attorney fees and costs, and ordered him to disgorge \$10,000 he had received from Abramson's trust. Getzels does not challenge the trial court's finding that he represented not Abramson but her half brother, William Levey. He argues the court could not require him to disgorge the \$10,000 without a finding that he had committed some other wrongdoing.

Getzels's briefs continually refer to evidence to which the trial court sustained objections (he does not challenge these rulings on appeal), fail to provide necessary record citations, and accuse opposing trial counsel of misstatements. Nevertheless, the briefing and record on appeal are sufficient to convince us his appeal has no merit. We affirm.

1. *The circumstances of Getzels's representation*

In a declaration filed with his fee request, Getzels stated he first met with Levey on February 4, 2015. Levey told him his half sister Abramson had an estate of \$20 million, and gave Getzels a power of attorney signed by Abramson on January 14, 2015, effective immediately, which made Levey Abramson's agent (after Abramson's accountant declined to serve). An advance health care directive Abramson signed on the same date made Levey her agent for healthcare decisions, also effective

immediately. Levey told Getzels he wanted Getzels “to represent Ms. Abramson, to fight against . . . physical and financial elder abuse.”

At the February 4, 2015 meeting, Getzels and Levey executed a retainer agreement reflecting a \$10,000 retainer and a \$375 hourly rate. The agreement stated: “The undersigned, Barbara Abramson (‘Client’) through William Levey, POA, who holds a Uniform Statutory Power of Attorney . . . and Power of Attorney for Health Care and Personal Care” retained Getzels “to represent Client in all matters to which the aforesaid Powers of Attorney apply.” The retainer also stated: “By her signature below, through William Levey, POA, Client states that she has carefully read and understands this entire Agreement, and agrees to the above terms and conditions, and agrees to retain Attorney on that basis.” Getzels signed the retainer agreement, and under “Barbara Abramson hereby agrees to the terms and conditions of this retainer agreement,” Levey signed as “Barbara Abramson, by William Levey, POA.” Abramson never saw the retainer agreement.

Following his meeting with Levey and the execution of the retainer, Getzels immediately involved himself in Abramson’s affairs, although he did not meet or talk with her. Getzels corresponded with and called the retirement center where Abramson lived, and after more meetings and conversations with Levey, discussed moving Abramson to another facility. On February 9, he received a phone call from Barbara Bergstein, who “claim[ed] to be Ms. Abramson’s attorney,” and on February 10 he received a phone call from the lawyers representing Abramson’s daughter Carin Baer and her husband Paul Pfeifle (collectively, Baer), the trustees of Abramson’s trust. The next day, February 11, Getzels received notice that on

February 13 Baer would bring an ex parte application to be appointed the conservator of Abramson's person and estate. Getzels immediately prepared declarations in opposition to the ex parte petition, and a memorandum of points and authorities. He appeared in court on February 13, when the court set a hearing on the ex parte application for February 20, 2015, and the court appointed Jeffrey Shuwarger as Probate Volunteer Panel (PVP) attorney for Abramson. Probate Code section 1470 permits the appointment of private legal counsel for a proposed conservatee if the person is not otherwise represented by legal counsel and the appointment would be helpful to resolve the matter. (Prob. Code, § 1470, subd. (a).)

On February 17, Getzels faxed a letter to the hospital where Abramson was then being treated, requesting that Carin Baer be removed from Abramson's room and from the hospital. Getzels also drafted and served (but did not file) an opposition to the conservatorship petition.

2. *The February 20, 2015 hearing*

On the day of the February 20 hearing (at which Abramson was present) Getzels filed several declarations in opposition to Baer's conservatorship petition (from Ann Landau, James Metcalfe, and Levey), and Baer's attorneys filed evidentiary objections to the declarations. With the consent of the parties, the trial court (Judge David S. Cunningham) took the evidentiary objections under submission.

PVP counsel stated he had spoken to Abramson several times, and she had consistently stated she wanted Baer to be her conservator. He also stated, "I have also asked her if she would prefer her brother to take care of her and take care of her finances, and consistently she has said no." Although Abramson showed "some confusion," he believed she was competent to select

her own conservator. PVP counsel also believed all the powers of attorney should be suspended so that the conservatorship could take precedence. He stated, “Mr. Getzels has filed some pleadings purportedly on behalf of my client. He has never met my client until this morning he introduced himself. He has not spoken with her.” He believed Getzels’s filings and his opposition to the petition did not express Abramson’s wishes; he stated: “He is basically William Levey, the brother’s, attorney. However, he has accepted money from my client’s funds. I think that should be disgorged and returned to her.”

Getzels explained he had a retainer agreement with Abramson “through her power of attorney.” He gave the court a copy. PVP counsel objected, “there’s nothing in there that allows counsel to represent a petition that’s adverse to his own client, and that’s what he’s doing.” The trial court reviewed the document, and stated that although the court might need to invalidate the power of attorney, at this point it “at least granted them the authority for claims in litigation,” and Getzels “may indeed be entitled to at least some type of compensation for his services.”

PVP counsel argued Getzels should be disqualified and removed from the case (although a fee hearing was necessary). Getzels’s opposition to the petition for conservatorship was adverse to Abramson, who had never seen or discussed it and had expressed a preference against Levey as her conservator. Baer’s counsel pointed out that Abramson had previously executed a power of attorney in favor of Carin Baer.

Levey interjected, “I can save you so much time it’s not funny.” The court responded, “you’re represented by counsel”; Levey answered, “yes”; and the court continued, “I am presuming

he's sort of your counsel." Levey responded, "He's her counsel"—pointing to Abramson. The court replied, "Well, he's your counsel to the extent that you had—you have the power of attorney on her behalf." Levey continued, "I'm about to resign. I don't want any part of any of this anymore. It's a circus. . . . I want to quit." The court stated, "That's something you need to talk to your attorney about"; and Levey responded, "I have." The court explained it wanted to hear legal arguments from counsel first.

Baer's counsel argued that Levey's power of attorney did not revoke Carin Baer's power of attorney, dated April 8, 2014, and Getzels had misrepresented to the court that he represented Abramson, not Levey. Just before midnight the night before the hearing, counsel had received from Getzels an email attaching a competing petition for conservatorship naming Levey as the proposed conservator. (This petition was not filed with the court.) Baer's counsel pointed to a state bar formal opinion holding that an attorney may not institute conservatorship proceedings on a client's behalf where the attorney has concluded the client is incompetent to act in her best interests: "An attorney cannot seek to impose an involuntary conservatorship." Baer pointed out that Levey had improperly withdrawn \$30,000 of Abramson's money from her trust, and the court could order disgorgement without waiting for a fee petition.

The court noted: "So this is all just now getting started It may be premature for me to at least make a ruling as to his entitlement to fees. I mean, he may indeed be entitled to something." Noting that Levey had said he wanted to withdraw his objections to the conservatorship, the court asked

Getzels, “Do you need a moment to talk to your client?” Getzels answered, “yes,” and the court took a brief recess.

When the hearing resumed, Getzels stated: “The way my client became involved in this matter—or not my client, but the way Mr. Levey got involved in this matter[—]was based on the banker James Metcalfe telling him that Carin Baer was financially abusing Ms. Abramson, his sister.” Getzels stated he had been paid \$10,000 and the rest of the \$30,000 was spent to move Abramson into the new facility. Based on Levey’s representations, Abramson’s bank had filed a report of suspected dependent elder financial abuse by Carin Baer. Levey told the court Carin Baer was taking Abramson’s money.

The court stated it would grant Baer a temporary conservatorship over Abramson, invalidate all the powers of attorney, and set a hearing on the \$30,000. It stated that, going forward, Getzels was not Abramson’s attorney “unless she separately and independently retains you. [I]f I grant the temporary [conservatorship], I’m basically finding that it appears, at least at first blush, she doesn’t have capacity. So I don’t think she can reappoint you.” At the next hearing the court would address compensation for Getzels for work to date. (“It may be on a quantum meruit basis, it may be time and expenses. I don’t know.”)

Levey asked the court to “make sure that my sister isn’t murdered, number one, and robbed and raped. . . . I want her to have enough money to live, and I don’t want her abused, and I don’t want her put in a place and neglected so that she has to go to the hospital, because that’s what happened. That’s why I put her at [the new facility].” The court explained that the hearing was to look out for Abramson’s best interests, only the temporary

conservatorship was in issue, and Getzels could file a competing petition, which would require another hearing.

The court noted that PVP counsel had represented Abramson preferred Baer as a temporary conservator. Turning to Abramson, the court asked her who she preferred as a temporary conservator, and she replied: “I would say my latest conservator on my staff who is—excuse me if I lose a little here.” The court excused her without further questions, and the hearing adjourned for the noon recess. Levey and Abramson left.

When the hearing resumed, Baer’s counsel argued that Getzels had consulted with and advised Levey during the lunch break, was jointly representing clients without consent, and should be disqualified from representing Abramson. Getzels argued that Carin Baer was financially irresponsible, stating that Abramson was “worth many millions of dollars and you can’t put a financially irresponsible person in charge of that.” The court suggested Getzels save that argument for the hearing on a permanent conservatorship. The court also pointed out that Abramson’s new facility was a lock-down facility for “dementia walkaways,” and if Abramson didn’t want to be confined there, that raised an issue regarding what was best for her.

Getzels again described what Carin Baer had “factually” done constituting elder abuse, as listed in the declarations he had filed with the court. The court pointed out it was sustaining some of the objections to the declarations (on hearsay and other grounds), and “we need to be . . . in a formal hearing.” Getzels was presenting argument rather than admissible evidence.

Getzels objected to the PVP counsel’s report, and argued that in the hall he was “just . . . talking about lunch” and not giving Levey advice. His last point was: “What Mr. Levey was

trying to convey to the court is he doesn't want to be the conservator. He would rather not be the conservator. He'd just like the court to appoint someone, but somebody other than Ms. Baer."

PVP counsel told the court that, while Abramson appeared confused in the afternoon and evening ("she tends to sundown"), when he had visited her in the mornings she was clear, and had told him she wanted Carin Baer, not Levey, to be her conservator to take care of her and her finances. Baer's counsel argued that Getzels was "clearly conflicted." Getzels was stating Levey's wishes and advocating for Levey's desires, not Abramson's, and he should be disqualified immediately and ordered to disgorge his fees.

Turning to the conservatorship petition, the court asked Getzels who put Abramson in the secure facility. Getzels stated Levey put her there because she was "isolated" at the other facility. The court reminded Getzels that the new facility was a lock-down and there was no evidence that Abramson was "a wanderer." Counsel for Baer argued that Abramson had been moved against her will and was extremely unhappy.

The court accepted the PVP counsel's report, and found it appropriate to proceed with the hearing without Abramson present. The court appointed Carin Baer as temporary conservator of Abramson's person, finding Abramson lacked capacity to make medical decisions, and appointed Baer as co-conservators of the estate. The court then stated that the objections to the conservatorship that Getzels served were not Abramson's objections: "The declaration in support [of the objections] is filed by Mr. Levey, and it appears it was Mr. Levey who is objecting. I agree with you that I think the joint

representation is in violation of the code, because I think it is a conflict. You've got Ms. Abramson, who obviously needs assistance. You've got the facts which indicate there's been some back and forth of people trying to get powers of attorney for her. And I'm invalidating all previous powers of attorneys. They are all superseded by the conservatorship." The court continued: "[I]t appears that the real party in interest on the objections is Mr. Levey. I think that's reasonably clear. . . . And by making that finding, I think that then just creates a conflict that would disqualify Mr. Getzels from representing the conservatee, because she's now the temporary conservatee. However, I'm not going to disgorge Mr. Getzels from his fees. What I am going to ask you to do is that you need to provide me with a billing statement."

The court refused to state whether Getzels was entitled to payment for services to date, noting that there was a power of attorney "[a]t a time where perhaps Ms. Abramson was probably operating with limited capacity, but I don't know that there was any undue influence or not placed on her" The court stated Getzels should "preliminarily be entitled to request [quantum meruit payment]. I'm not going to say that because I don't know whether he would be entitled to it. But at this point I don't see a basis to disgorge without more. It's not clear to me if Mr. Getzels was or was not operating in good faith I don't know that Mr. Getzels has done anything inappropriate. [¶] . . . [¶] . . . I'm pretty much finding that I think the real party in interest is Mr. Levey."

The court ordered Getzels to prepare a billing statement. Having denied the objections to the temporary conservancy, the court deferred "the question of whether or not [Getzels is]

disqualified to represent Mr. Levey on objections.” The court also invalidated the prior advance health care directives, and agreed to issue an order returning Abramson to her prior residence.

On February 24, the trial court filed an order ruling on Baer’s evidentiary objections. The court sustained the objections to all but the first paragraph of Landau’s declaration, to the elder abuse report from the bank, and to most of Levey’s declaration.

3. *Getzels’s petition for fees and costs*

Despite repeated reminders by Baer’s counsel, Getzels did not file a fee request until April 14, 2016, more than a year after the February 20, 2015 hearing. Abramson had since moved to Georgia (which had accepted Baer’s conservatorship and guardianship). Getzels’s petition for attorney fees and costs in the conservatorship of Abramson attached an invoice for \$15,629.95 in fees and costs for legal services between February 4 and February 20, 2015 and phone calls to Levey on March 20, 2015. The invoice showed a payment of \$10,000 on February 4, 2015, and a balance due of \$5,629.95. The invoice was addressed to “Barbara Abramson c/o William Levey” at Levey’s home address, and described Getzels’s correspondence, phone calls, and conferences with Levey as “with client,” although the invoice also listed telephone calls from and to “William Levey.”

Also on April 14, 2016, Getzels filed an opposition to an application for an order to show cause for disgorgement, filed by Baer as conservator. (The application for an order to show cause is not in the record on appeal.)

On May 6, 2016, PVP counsel filed a report in response to the fee request, stating that on February 20, 2015, “the court found that the real party in interest for the Objections was William Levey, the proposed Conservatee’s half-brother[,] and not

the proposed Conservatee. Mr. Getzels was disqualified as to representation of proposed Conservatee, but was not disqualified as to representation of William Levey.” And, because the \$10,000 retainer came from Abramson’s estate, even assuming the fee amount was deserved, “the Petition should still be denied. Mr. Getzels’ client is William Levey and he should seek the fees and costs from him.” The report recommended the request for fees be denied and the \$10,000 be disgorged and returned to Abramson’s estate.

On May 9, the trial court granted Baer’s petition for approval of the conservators’ final account and report. (The petition is not in the record on appeal.) Getzels filed a supplemental opposition to the application for order to show cause and a reply to the PVP counsel’s report on May 13, 2016.

Baer filed a response and objections to Getzels’s fee petition on May 18, 2016, arguing the court had already determined that Getzels represented not Abramson, but Levey, and Getzels violated his ethical obligations by claiming he was Abramson’s attorney while he acted on Levey’s behalf. The opposition asked the court to deny the petition for attorney fees, order Getzels to disgorge the \$10,000 he received from Abramson’s funds, and award the conservators their attorney fees and costs. The conservators made similar arguments in reply to Getzels’s opposition to the application for order to show cause.

4. *The May 20, 2016 hearing*

Judge William Barry presided over the hearing on the fee petition on May 20, 2016. Baer’s counsel argued “every single step that Mr. Getzels took in this case, or allegedly took, was in furtherance of the personal interest and agenda of William

Levey. At no point in time did he actually render any services that were of any benefit to Ms. Abramson, the actual conservatee.” The court asked how a lawyer could know that someone with a valid power of attorney was giving instructions for his own benefit rather than that of the person who issued the power of attorney. Baer’s counsel responded that it was contrary to Getzels’s ethical obligation to try and conserve Abramson, and to take her to a new facility, all of which was not acting on behalf of Abramson, but on Levey’s behalf.

The court asked whether Getzels had been aware Abramson was represented by PVP counsel. Baer’s counsel answered that Getzels had been at the ex parte hearing on February 13, at which the court appointed PVP counsel for Abramson. PVP counsel argued that when Levey gave Getzels the power of attorney and they signed the retainer, Getzels “should have called his client and talked to her.” Instead, until the February 20, 2015 hearing, “[Getzels] had never met her. He had never talked to her, but yet he purportedly represented Barbara Abramson. All he had done was things adverse to her interest: moving her to the [locked facility]; the letter; he filed objections to a petition which she did not oppose” (Baer’s petition for conservatorship of Abramson). PVP counsel continued: “Judge Cunningham ruled that Mr. Getzels did not represent Barbara Abramson, he represented William Levey.”

Getzels agreed: “He [Judge Cunningham] said, I find that your real client is Mr. Levey.” He argued that Levey was trying to protect his sister, and, “I never filed the petition to have Mr. Levey appointed the conservator. I prepared one as a backup, but I didn’t file it.” Getzels defended moving Abramson to the locked facility.

Judge Barry concluded: “Based on the information that’s been presented to me and the arguments that have been made, I find that Mr. Getzels was, in fact, representing Mr. Levey and that the OSC . . . to return the funds is—should be granted.” The court also denied Getzels’s petition for fees and to retain the \$10,000. The court denied Baer’s counsel’s request for fees for preparing for and appearing at the hearing, approved PVP counsel’s remaining fees, and discharged PVP counsel.

The court filed an order directing Getzels to disgorge the \$10,000 and denying his petition for fees on June 17, 2016.

Meanwhile, on May 26, 2016, Getzels filed a motion to vacate the “May 20, 2106 disgorgement order,” arguing it was inconsistent with “rulings denying disgorgement” at the earlier hearing on February 20, 2015. The conservators filed an opposition and Getzels filed a reply. At a hearing on June 22, 2016, Getzels stated: “Judge Cunningham [made] findings that I hadn’t done anything wrong, even knowing that I was representing . . . Mr. Levey, which was his finding.” Judge Barry suggested that Getzels was simply rearguing the disgorgement motion, and “[w]e don’t give multiple bites at the same apple.” The court denied Getzels’s motion to vacate the disgorgement order. Getzels filed a timely notice of appeal.

DISCUSSION

This is a simple case. Getzels received a \$10,000 retainer from Abramson’s trust. Both trial judges found Getzels represented Levey, not Abramson. Getzels does not challenge that finding. Getzels therefore was not entitled to any fees from Abramson, who was not his client. He nevertheless argues that he cannot be required to disgorge the \$10,000 he received from

Abramson's trust without a finding that he committed some other wrongdoing. This argument has no merit.

Much of Getzels's statement of facts relies on the declarations the court refused to admit into evidence. We do not address any of his arguments based on excluded evidence. He also mischaracterizes the order he appeals from as "a final sanctions order" under Code of Civil Procedure section 904.1, subdivision (a)(11). The order does not award sanctions. Instead, the order denies Getzels's fee request and orders him to disgorge the payment already received.

We independently review whether Getzels was entitled to an award of attorney fees. (*Van Slyke v. Gibson* (2007) 146 Cal.App.4th 1296, 1299.)

Getzels argues that on February 20, Judge Cunningham concluded that he "had not done anything wrong that would support disgorgement," and Judge Barry was bound by that conclusion. Judge Cunningham made no such finding. He declined to state whether Getzels was entitled to payment for the work he had already done, while allowing him to request fees. Judge Cunningham did conclude that Levey was the real party in interest, and that once the temporary conservatorship was in place, Getzels would be disqualified from future representation of Abramson. Judge Barry agreed that Getzels represented Levey.

Getzels also argues he cannot be required to disgorge the \$10,000 in fees he received from Abramson's estate, because the record contains no evidence that his conduct was "wrongful." "There are two types of disgorgement: restitutionary disgorgement, which focuses on the plaintiff's loss, and nonrestitutionary disgorgement, which focuses on the defendant's unjust enrichment. [Citation.] 'Typically, the defendant's benefit

and the plaintiff's loss are the same, and restitution requires the defendant to restore the plaintiff to his or her original position.' ” (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1482.) This is a typical case of restitutionary disgorgement. Getzels received a \$10,000 benefit from Abramson's trust when he received the \$10,000 retainer. The trial court found Getzels represented not Abramson but her half brother Levey. The trust's payment of \$10,000 for legal services rendered not to Abramson, but to Levey, caused a loss of \$10,000 to the trust. As we focus on the loss to Abramson's trust, Getzels was required to disgorge the \$10,000 retainer to restore Abramson's trust to its original position. No finding of additional “wrongdoing” is required to impose the equitable remedy of restitutionary disgorgement. This is not a case of nonrestitutionary disgorgement, in which an unjustly enriched defendant may be required to disgorge all money obtained through wrongdoing, even though not all the money is to be restored to the persons from whom it was taken. (*Madrid v. Perot Systems Corp.* (2005) 130 Cal.App.4th 440, 460; *In re Tobacco Cases II* (2015) 240 Cal.App.4th 779, 800.) In nonrestitutionary disgorgement, the emphasis is on the unjust enrichment of the wrongdoer regardless of actual damage or loss to the other party. (*Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 398-399.) Here, the court ordered Getzels to disgorge only the \$10,000 Abramson's trust lost and Getzels gained.

We repeat: Getzels does not argue on appeal that Abramson was his client, instead admitting he represented Levey. Getzels argues he did not act in self-interest, but that is irrelevant, as are his arguments regarding the merits of the conservatorship. He argues he did not know that a PVP attorney

had been appointed before the February 20 hearing, but does not explain how this is relevant to his fee request (and he was present at the courthouse on February 13, 2015, when the court appointed the attorney and set the February 20 hearing).

Respondents' brief argues that Getzels breached his fiduciary obligations by representing conflicted clients and committing improper acts inconsistent with his professional duties. We need not address those arguments. As to the time before the conservatorship was in place, the trial court concluded only that Getzels represented Levey, not Abramson, and that alone justifies disgorgement of the \$10,000 retainer paid by Abramson's trust. An attorney is required to return funds received from a nonclient, and may not retain any of the nonclient's funds "knowing that there was no separate agreement that the nonclient would be liable for the client's attorney fees." (*Hartford v. State Bar* (1990) 50 Cal.3d 1139, 1154.) The court found that Levey, not Abramson, was Getzels's client, and Getzels was required to disgorge the funds received from Abramson's trust.

As the trial court was correct to order Getzels to disgorge the \$10,000 retainer, its denial of Getzels's motion to vacate was within its discretion. (*Giorgio v. Synergy Management Group, LLC* (2014) 231 Cal.App.4th 241, 247.)

DISPOSITION

The orders are affirmed. Costs are awarded to respondents Carin Baer, Conservator of the Person of Barbara L. Abramson, and Carin Baer and Paul Pfeifle, Coconservators of the Estate of Barbara L. Abramson.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P.J.

DHANIDINA, J.