Filed 2/8/18 Drumgo v. Superior Court CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WILLIE MAE DRUMGO, Petitioner. v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; HALLIE GARDNER LYNCH et al. Real Parties in Interest.	B271238 (Los Angeles County Super. Ct. No. BP112376)

APPEAL from an order of the Superior Court of Los Angeles County, Lesley C. Green, Judge. Appeal dismissed.

ORIGINAL PROCEEDING in prohibition. Petition denied.

Law Office of Claud A. Sinclair and Claud A. Sinclair for Appellant.

No Appearance for Respondents.

INTRODUCTION

Willie Mae Drumgo, in her personal capacity and in her capacity as successor trustee of the James Gardner and Beatrice Gardner Revocable Trust (the Trust), appeals from an order finding her guilty of contempt for willfully violating a court order directing the disposition of certain trust assets. Although an appeal is not authorized from an order of contempt (Code Civ. Proc., § 904.1, subd. (a)(1)), we will exercise our discretion to consider Drumgo's challenge as a writ petition (see, e.g., *Van v. Language Line Solutions, Inc.* (2017) 8 Cal.App.5th 73, 79), and deny the writ.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the record in the light most favorable to the trial court's order, indulging all intendments and presumptions to support it on matters as to which the record is silent. (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435; *In re Marcus* (2006) 138 Cal.App.4th 1009, 1015.)

As the appellant, Drumgo had a duty to provide this court with an adequate record on appeal. (*In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.) Her failure to do so has severely hampered our effort to recite the facts and procedural history of this case. Among other things, Drumgo failed to provide (1) transcripts of the trial court proceedings that resulted in the pertinent settlement agreement and that set forth the terms of the court order that the trial court found Drumgo had violated; (2) the original motion by respondent, Devin Lynch, to enforce the settlement and for attorneys' fees; and (3) the trial court's order to show cause regarding contempt for Drumgo's apparent violation of the court order on the settlement

agreement. With respect to the latter two documents, Drumgo designated only her responsive briefs for inclusion in the clerk's transcript. Although the inadequacy of the record alone is grounds to dismiss Drumgo's appeal, we will exercise our discretion to analyze the case with the materials provided, indulging all presumptions in favor of the trial court's ruling where the record is silent. (*Ibid*; *Osgood v. Landon, supra,* 127 Cal.App.4th at p. 435.)

In 1992, James and Beatrice Gardner executed a joint revocable trust, naming themselves as trustors, and naming Drumgo and Hallie Gardner Lynch (Hallie) as successor co-trustees. The Trust named Drumgo, Hallie, Shannon Lynch (Shannon) and Devin Lynch (Devin) as beneficiaries upon the death of the surviving trustor.

After the deaths of Beatrice and James Gardner (in 2007 and 2008, respectively), disputes arose between the beneficiaries regarding the disposition of various trust assets. In May 2008, Drumgo filed a petition to remove Hallie as co-trustee, alleging the misuse of trust assets and breach of trust. In April 2009, after an evidentiary hearing, the trial court ordered Hallie to be removed as co-trustee, and for Drumgo to serve as sole trustee.

On June 8, 2010, the trial court held a hearing to address ongoing disputes between the trust beneficiaries, including a petition to remove Drumgo as trustee. Although Drumgo did not include a transcript of the hearing in the appellate record, we can infer from the record that was provided that, at the hearing, three of the four beneficiaries (Drumgo, Hallie, and Shannon) announced that a settlement had been reached to resolve all outstanding disputes. The parties placed the settlement terms on the record, and Drumgo, who was present at the hearing,

accepted the terms with the concurrent agreement of her counsel. The trial court instructed Shannon's counsel to reduce the settlement terms to writing, and to circulate the document to all beneficiaries, including Devin, who was not present at the hearing. The court stated the settlement agreement was binding as to all parties settling on June 8, 2010 (Drumgo, Hallie, and Shannon), with the only condition to final approval being Devin's signed acceptance of the settlement agreement. The court then set an order to show cause hearing for the parties to report on Devin's decision regarding the settlement.

On June 24, 2010, Devin, Hallie, and Shannon executed the written settlement agreement. The settlement agreement stated the Trust had $611,000 in cash on hand, and owned two pieces of real property located in California and Arkansas. As pertinent to this appeal, the settlement agreement provided for Drumgo, in her capacity as trustee, to sell the real property located in California (the Main Street property) and to distribute the sale proceeds as follows: (1) the first $25,000 to Shannon directly from escrow; and, with respect to the remaining proceeds, (2) half to Drumgo; (3) one quarter to Hallie; and (4) one quarter to Devin. The written settlement agreement did not contain an express provision for the payment of administrative expenses with respect to the Main Street property. Drumgo refused to sign the agreement.

On June 25, 2010, the trial court held a hearing regarding the status of the settlement agreement. Again, Drumgo did not include a transcript of the hearing in the appellate record; however, we can infer from the record provided that the trial court questioned Drumgo's counsel regarding his client's refusal to sign the agreement. It seems Drumgo's counsel objected to the

absence of a provision for payment of administrative expenses related to the Main Street property sale. The court rejected that objection, citing the parties' stipulations at the June 8, 2010 hearing, at which the parties apparently settled the issue of administrative expenses by deducting the expenses from the cash on hand figure ultimately stated in the written settlement agreement. Thus, notwithstanding Drumgo's refusal to sign the settlement agreement, the trial court approved the agreement, with certain interlineated changes not pertinent to this appeal, and apparently adopted it as a court order (the 2010 order).

In July 2010, Drumgo completed the sale of the Main Street property on behalf of the Trust. The net sale proceeds were $163,813.86. Prior to distributing the proceeds to the beneficiaries, Drumgo deducted approximately $61,000 for "administrative expenses of the estate."[1] Drumgo then distributed the remaining funds according to the terms of the settlement agreement and the 2010 order. Of those funds, she paid $19,517.43 to Devin.

In November 2015, Devin filed a motion to enforce the settlement agreement and for attorney fees.[2] Drumgo did not include Devin's motion or supporting documentation in the appellate record; however, it appears from Drumgo's opposition

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[1] Due to gaps in the record, we cannot determine the exact amount Drumgo deducted from the sale proceeds prior to distribution.

[2] The settlement agreement provided the trial court would retain jurisdiction over the parties pursuant to Code of Civil Procedure section 664.6 to enforce the settlement. The agreement also provided for prevailing party attorneys' fees in the event of a dispute to enforce its terms.

brief that the motion challenged her deduction of the purported administrative expenses from the proceeds of the Main Street property sale. Devin apparently argued that, as a result of the unauthorized deduction, he received $15,187.29 less than he was entitled to under the settlement agreement.

The motion was heard on December 17, 2015. By this time, the case was before a different trial judge than the judge who presided over the case in 2010. The court concluded the motion was procedurally defective, as the settlement agreement had been reduced by the predecessor judge to a court order (the 2010 order), which the court had jurisdiction to enforce through a contempt proceeding. Accordingly, the court denied Devin's motion as moot, and entered an order to show cause as to whether Drumgo should be held in contempt for violating the 2010 order on the settlement agreement. With the consent of Drumgo's counsel, the court set the hearing on the contempt charge for January 26, 2016.

On January 22, 2016, Drumgo filed a response to the court's order to show cause.[3] In her response, Drumgo argued

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[3] Drumgo contends she "was not properly served by the court with the [order to show cause]" and, therefore, the court failed to perfect jurisdiction over her with respect to the charge of contempt. (See *Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281, 1286-1287 (*Cedars-Sinai*).) Drumgo did not designate the court's order to show cause for inclusion in the record, and there is no proof of service in the record provided by which to judge the veracity of her claim. Nor did Drumgo raise the supposed lack of personal service in her response to the order to show cause or at the subsequent hearing. In any event, we need not be detained by Drumgo's jurisdictional contention, because it is undisputed that she responded to the order to show cause and personally appeared at the evidentiary

(1) the settlement agreement was ambiguous with respect to the payment of administrative expenses, and the court should not rewrite the agreement in favor of Devin; (2) the Probate Code required her to pay the Trust's administrative expenses, irrespective of the settlement agreement's terms; and (3) the court lacked jurisdiction to decide the matter because it had already "denied" Devin's motion at the December 17, 2015 hearing.

On January 26, 2016, the trial court held a hearing on its order to show cause. In advance of the hearing, Devin's counsel presented the court with transcripts of the June 8, 2010 and June 25, 2010 hearings at which the parties discussed and agreed to the terms of the settlement agreement. After reviewing the hearing transcripts, the court found that the matter of expenses had been extensively discussed and that Drumgo had agreed to

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hearing to contest the contempt charge on the merits. It is settled that a general appearance by filing a response to a contempt citation precludes the contemnor from questioning the court's jurisdiction over her person. (*Donovan v. Superior Court* (1952) 39 Cal.2d 848, 851; *Darden v. Superior Court* (1965) 235 Cal.App.2d 80, 82 (*Darden*).) And, our Supreme Court has long recognized that a jurisdictional challenge for lack of personal service is waived where the contemnor appears, personally or by counsel, and resists the charge of contempt on the merits. (*Leonis v. Superior Court* (1952) 38 Cal.2d 527, 531; cf *Cedars-Sinai,* at pp. 1287-1288 [holding lack of personal service meant court lacked jurisdiction to hold party in contempt, but recognizing result would be different had party voluntarily appeared and contested charge on the merits].) In view of Drumgo's response and appearance, personally and by counsel, at the evidentiary hearing, she cannot challenge the trial court's jurisdiction on the ground that the service of process was defective.

distribute the proceeds of the sale without taking deductions to pay additional administrative expenses.

The trial court emphasized that the June 8, 2010 hearing transcript showed Drumgo's attorney had called Drumgo regarding the matter of administrative expenses and then, to compensate for those expenses, "came up with a number lower than it had been before" for the cash on hand figure to be included in the settlement agreement. And, the court concluded that, at the June 25, 2010 hearing, the judge then presiding had rejected Drumgo's assertion that further deductions for administrative expenses should be permitted. The trial judge quoted her predecessor's comments at the June 25 hearing: " 'I have now reviewed the transcript of the June 8th proceeding. Your client was present, Ms. Willie Mae Drumgo. You were present, Mr. Sinclair. The settlement was placed on the record and there's absolutely no mention that the cash on hand is any different than what was stated on the record with your client present.' " Thus, based on "a fair reading of the transcript and of the written and signed settlement agreement," the trial court found Devin was entitled to one quarter of the Main Street Property sale proceeds, without deductions for additional purported administrative expenses, under the 2010 order.

In its written order after the hearing, the trial court concluded Drumgo, as trustee, "had the ability to comply with [the 2010 order] and to distribute the agreed one quarter to [Devin] without deductions," and that "Drumgo willfully disobeyed the Order." Accordingly, the court ordered Drumgo to pay the difference of $15,187.29 to Devin from the sale proceeds, and to personally pay Devin's attorneys' fees for the contempt proceeding in the amount of $3,690.

DISCUSSION

Drumgo challenges the contempt order on two grounds. First, she contends the trial court lacked jurisdiction to issue the order to show cause because "it had already ruled that the Motion brought by [Devin] had been denied" and, therefore, the court could not "order[ ] another hearing on the same subject matter upon which [it] had already ruled." Second, Drumgo argues the 2010 order is invalid, because it violates a statutory mandate to pay administrative expenses of a trust before any other claims on the estate. Neither contention has merit.

In judicial proceedings concerning trusts, the probate court "is a court of general jurisdiction and has all the powers of the superior court," including the power to compel obedience to its orders by punishments for contempt. (Prob. Code,[4] § 17001; *Ex parte Smith* (1878) 53 Cal. 204, 207-208 ["executors hold the property of the estate *in trust* for the creditors and heirs and others interested in the estate, and as such trustees their obedience to the orders of the Probate Court may be compelled by proceedings for contempt"]; see also § 800 [defining powers of probate court for all proceedings under the Probate Code to include "the matters authorized by Section 128 of the Code of Civil Procedure," embracing the contempt power].)[5]

"The willful refusal to obey a valid court order is an act of contempt." (*In re Marcus, supra,* 138 Cal.App.4th at p. 1014; Code Civ. Proc., § 1209, subd. (a)(5).) "The elements of proof

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[4] Further statutory references are to the Probate Code, unless otherwise designated.

[5] Further statutory references are to the Probate Code, unless otherwise designated.

necessary to support punishment for contempt are: (1) a valid court order, (2) the alleged contemnor's knowledge of the order, and (3) noncompliance." (*In re Marcus,* at p. 1014.) "In writ proceedings to review an adjudication of contempt, our inquiry is whether there was any substantial evidence before the trial court to prove the elements of the contempt." (*Id.* at p. 1015.)

Drumgo's first contention misconstrues the court's order denying Devin's motion to enforce the settlement agreement. Drumgo contends the court lacked jurisdiction to issue its order to show cause, because the court had already rejected Devin's "theory of recovery." The record does not support this charge. The transcript of the relevant hearing, and the order entered in the superior court file,[6] both confirm that the court denied the motion as "moot," because the terms of the settlement agreement were already reduced to an enforceable court order – i.e., the 2010

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[6] In her opening brief, Drumgo contends the "trial court judge . . . changed the original court order in the file" by "carefully whiten[ing] out" the date and signature line of the "original order" and replacing the order with the one "reflected in the Clerk's Transcript." The order included in the clerk's transcript contains the trial judge's hand-written ruling, stating Devin's motion was "moot because the agreement to be enforced was reduced to an enforceable order on 6/25/10." The written ruling is consistent with the court's oral ruling, as reflected in the reporter's transcript of the hearing. Drumgo nevertheless maintains the "original order" is the one attached as an appendix to her opening brief, which appears to be a copy of her proposed order, captioned with her counsel's name and address, stating only that Devin's motion "is **DENIED**." We have no reason to doubt the authenticity of the order contained in the clerk's transcript, which is consistent with the court's comments as reported in the relevant hearing transcript.

order. Thus, the court determined a motion to enforce the settlement was not necessary to compel Drumgo's compliance with its terms, which were reflected in the 2010 order. Contrary to Drumgo's premise, the order denying Devin's motion did not determine the parties' obligations under the settlement agreement or address the validity of the 2010 order. The trial court simply determined that it had authority to compel obedience to its prior order through a contempt proceeding. The court did not err in that ruling. (See § 17001; *Ex parte Smith, supra,* 53 Cal. at pp. 207-208.)

Drumgo's second argument is likewise unsupported by the record she has presented for this appeal. Drumgo contends the 2010 order was not a valid court order, because it did not account for administrative expenses that she was statutorily required to pay before other claims against the estate. Drumgo did not include the 2010 order in her designation of record. Nor did she provide the transcripts of the 2010 hearings, which the trial court found were dispositive on the question of how administrative expenses were to be paid under the settlement agreement and the 2010 order. Drumgo's failure to present these critical materials notwithstanding, the record she has presented supports our presumption that the trial court was correct in its ruling, and we therefore reject her attack on the validity of the 2010 order. (See, e.g., *Darden, supra,* 235 Cal.App.2d at pp. 82-83 [presuming evidence supported trial court's exercise of jurisdiction in contempt proceeding where appellate court had "neither transcript nor settled statement" of the proceeding].)

Drumgo relies upon section 11420. The statute provides that expenses of administration shall be given priority over other classes of debt owed by the estate, except preferred debts owed to the United States and to California. (§ 11420, subd. (a)(1); see also § 19001, subd. (b) [upon the death of a settlor, "the matters set forth in Section 11420 . . . shall be applied to the trust as it applies to a probate estate"].) While section 11420 controls the *order* in which various types of expenses are to be paid, it does not dictate the *amount* of allowable expenses, which remains a matter within the discretion of the trial court. (*Estate of Stevenson* (2006) 141 Cal.App.4th 1074, 1090.) Further, section 19005 authorizes the trustee to "at any time pay, reject, or contest any claim against the deceased settlor or *settle any claim by compromise*, arbitration, or otherwise." (Italics added.) And, section 19027 grants the trial court "discretion [to] make any orders and take any other action necessary or proper to dispose of the matters presented by the petition" for settlement of a claim. (§ 19027, subd. (a).) It is only "[i]f the court determines that the assets of the trust estate are insufficient to pay all debts, [that] the court shall order payment in the manner specified by Section 11420." (*Id.*, subd. (b).)

Drumgo also contends the 2010 order was invalid because it did not account for the payment of administrative expenses as mandated by section 11420. The trial court rejected that argument, finding the transcripts of the 2010 hearings showed the parties agreed to account for administrative expenses by deducting them from the cash on hand figure that was ultimately included in the settlement agreement. According to the trial court's reading of the 2010 transcripts, the judge then presiding specifically rejected Drumgo's assertion that a provision for

additional administrative expenses related to the Main Street property should be included in the settlement agreement. The judge had discretion to set the amount of allowable administrative expenses (see *Estate of Stevenson, supra,* 141 Cal.App.4th at p. 1090), and to make any necessary and proper order to dispose of the matters presented by the parties' settlement agreement (§ 19027, subd. (a)). Based on the trial court's reading of the 2010 transcripts (which, again, Drumgo did not include in the appellate record), it appears the judge properly exercised that discretion in entering the 2010 order on the settlement agreement. In view of the record presented, we are obliged to presume the trial court correctly found the 2010 order was a valid court order, which the court was authorized to enforce by a punishment for contempt. (See *Ex parte Smith, supra,* 53 Cal. at pp. 207-208.)

DISPOSITION

Drumgo's appeal from the order finding her guilty of contempt is dismissed. The petition for a writ of prohibition is denied. The parties shall bear their own costs.

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CURREY, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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