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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SALLY CICERONE,

Plaintiff and Appellant,

v.

SHARON C. KENNEDY,

Respondent.

2d Civil No. B278452  
(Super. Ct. No. 16PR00052)  
(Santa Barbara County)

Sally Cicerone appeals a probate order directing her, as the ex-trustee of The Brouhard Trust (Trust), to refund \$14,519 in fees and costs she paid herself after she was removed as trustee, and to refund \$18,231 in fees she paid her attorney. The probate court found that appellant charged \$3,425 in excessive fees for a November 20, 2014 hearing, and directed the trustee not to pay appellant \$4,687.50 for services related to a final accounting. We affirm.

*Facts and Procedural History*

June Koenig Brouhard is the settlor and former trustee of The Brouhard Trust Established August 11, 2011.

Brouhard was diagnosed as suffering from dementia in 2014, which resulted in the appointment of successor trustees. On September 23, 2014 appellant, a fiduciary trustee, consented to become successor trustee of the Trust. Appellant filed a conservatorship petition the next day in the San Diego County Superior Court in case number 37-2014-00032443-PR-CP-CTL.

Brouhard's niece, Patricia Collins, moved Brouhard from a care facility in San Diego County back to Brouhard's home in Santa Barbara and filed her own conservatorship petition.

(Case no. 1469020.)<sup>1</sup> On November 20, 2014, the Santa Barbara County Superior Court appointed Collins as conservator of Brouhard's person and Jacqueline Quinn, a professional fiduciary, as conservator of Brouhard's estate and as trustee of the Trust. Respondent Sharon Kennedy was later appointed successor trustee to replace Quinn.

Although appellant was removed as trustee on November 20, 2014, appellant did not turn over the trust funds (\$1,740,000+) to Kennedy until March 23, 2016, after the probate court ordered her to do so. On April 18, 2016, about a year and a half after appellant was replaced as trustee, appellant filed a First and Final Account and Report of Trustee; Petition for its Settlement; and for Approval of Additional Fees and Costs. The petition stated that appellant had already paid her attorney Jeffrey Vanderveen \$28,293.70 in fees and paid herself \$14,519. Appellant requested authority to pay Vanderveen another \$5,324 in fees for services up to November 20, 2014, when the court

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<sup>1</sup> Because two conservatorships petitions were pending in different counties, the San Diego Superior Court deferred to the Santa Barbara Superior Court.

removed appellant as trustee. Vanderveen claimed another 18.5 hours in services after the November 20, 2014 hearing.

Respondent Kennedy objected to the petition on the ground that the accounting lacked information to make it understandable and on the ground that appellant transferred the trust funds to Vanderveen's trust account without court permission after appellant was removed as trustee. After the trust funds were transferred, Vanderveen paid himself \$18,231 in trust funds and paid appellant \$14,519 in trust funds without court permission. Respondent objected that appellant billed five hours and Vanderveen billed seven hours for travel time to the November 20, 2014 hearing when the appearance could have been made by Court Call.

The probate court reviewed the billings and stated that "I have a hard time understanding what all that was for." "I have looked at the bills and . . . it seems like an awful lot of activity . . . under relatively straightforward circumstances." The court was concerned that the payments "were made by the trustee after her authorization to do so had ceased." Vanderveen said that he kept waiting for the successor trustee "to contact us in order to turn over the funds." The court asked, "if you were just waiting, what were you doing in the interim that was incurring so many fees?" Vanderveen replied: "We were doing the accounting, we were -- well, we were communicating with a court-appointed attorney." The court found that the billing amounts were "baffling" and granted appellant's attorney leave to file a supplemental declaration.

The probate court took the matter under submission and found that: (1) appellant and Vanderveen charged excessive fees (\$3,425) for travel time to the November 20, 2014 hearing

when they could have appeared by Court Call; (2) appellant improperly paid herself \$14,519 after she was removed as trustee; and (3) Vanderveen was improperly paid \$18,231 in trust funds after his client/appellant was removed as trustee. The trial court ordered that the trust payments be refunded to the trust and found that appellant's request for \$4,687.50 for services relating to the accounting was excessive and should not be paid by the trustee.

*Motion to Dismiss Appeal*

Respondent argues that the appeal should be dismissed because the notice of appeal states appellant is appealing from an October 11, 2016 order. The order appealed from is dated August 30, 2016. We conclude that the defect in the notice of appeal is not fatal to the appeal. California Rules of Court, rule 8.100(a)(2) provides that a "notice of appeal must be liberally construed." This rule has been interpreted to mean a notice of appeal is sufficient if "it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59; see, e.g., *Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244, 251.) Here, the opening brief challenges the August 30, 2016 order and respondent has responded to appellant's arguments. In deference to the policy favoring review on the merits, we conclude that the notice of appeal is sufficient even though it misstates the date the order was entered.

*Order Denying Fees and Costs and Directing Trust Refund*

Appellant contends that the trial court erred in not approving appellant's payment of her trustee fees and costs and attorney fees. We review for abuse of discretion. (*Kasperbauer v.*

*Fairfield* (2009) 171 Cal.App.4th 229, 234.) Probate courts have broad and express powers under Probate Code section 17200 in awarding trustee fees and attorney fees. (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427-428.) Even when fees and costs are well documented, they are only chargeable against the trust when they benefit the trust. (*Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221, 1227.)

Here the fees and costs were poorly documented and includes fees and costs incurred after appellant was removed as trustee. Appellant claims the fees and costs were necessary to protect Brouhard from family members and that any delay in turning over the trust funds was because the successor trustee did not contact appellant. None of that is documented in the accounting nor did appellant make a credible showing that the fees and costs were reasonable and necessary to protect Brouhard and the trust.

Appellant failed to explain why she waited so long to file the accounting, why appellant transferred trust money to her attorney's trust account after appellant was removed as trustee, why trust funds were used to pay fees and costs without court authorization, and why appellant and her attorney should be compensated for time spent correcting a simple accounting. Trustees are charged with the responsibility of incurring fees and expenses that are reasonable in amount and appropriate to the purpose of the trust. (*Estate of Moore* (2015) 240 Cal.App.4th 1101, 1105.) After appellant was removed as trustee, she was duty bound to turn over the trust assets and promptly file an accurate and complete accounting. The trial court reasonably concluded that the delay was unreasonable and the fees and costs incurred by appellant and her attorney were excessive and

unreasonable. (*Id.* at pp. 1105-1106.) “Long-established principles of trust law impose a double-barreled reasonableness requirement: the fee award must be reasonable in amount and reasonably necessary to the conduct of the litigation, but it also must be reasonable and appropriate *for the benefit of the trust.*” (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 263.)

On review, we are precluded from, substituting our judgment for the judgment of the trial court. (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449.) The record shows that appellant was removed as trustee, used trust funds to pay herself and her attorney without court authorization, and waited almost 18 months before filing an accounting. The trial court reasonably concluded that the accounting delay was unreasonable, as were the fees and costs charged to the trust. (See Prob. Code, §§ 16060 [trustee has duty to keep trust beneficiary reasonably informed of the trust and its administration]; 16061 [duty to report information about trust on request]; 16062, subd. (a) [duty to account upon a change of trustee]; *Strauss v. Superior Court* (1950) 36 Cal.2d 396, 401 [trustee has duty upon request to give beneficiary complete and accurate information relative to the administration of the trust].)

The judgment (August 30, 2016 order) is affirmed.  
Respondent is awarded costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

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Vanderveen for Petitioner and Appellant.

Miller & Berryhill and Mary Jane Miller; Ferguson  
Case Orr Paterson and Wendy C. Lascher for Respondent.