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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

NANCY DOLINGER, Plaintiff and Appellant, v. FE BALDERAMA, Defendant and Respondent.	B260171 (Los Angeles County Super. Ct. No. BP144407)

APPEAL from a judgment of the Superior Court of Los Angeles County, James A. Steele and Lesley C. Green, Judges. Affirmed.

Nancy Dolinger, in pro. per., for Plaintiff and Appellant.

Law Offices of Michael C. Murphy and Michael C. Murphy for Defendant and Respondent.

INTRODUCTION

Nancy Dolinger appeals from an adverse judgment after a court trial on a probate petition she filed against Fe Balderama, the successor trustee of a trust established by Dolinger's mother, Beverly Seeman. Dolinger argues primarily that the trial was unfair and the court deprived her of her inheritance without due process, and that the judgment is the product of extrinsic fraud. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Beverly Seeman Trust and Its Assets*

Beverly Seeman died in April 2008. One month before she died, she created the Beverly U. Seeman 2008 Trust. Beverly Seeman transferred to the trust all of the personal property at her residence at the Day's Inn in Glendale, California; a certificate of deposit in a bank in Burbank, California; and 300 shares of stock in Joseem, Inc., a corporation that owned real property in northern California with a convenience store and a gas station on it.

The 300 shares of Joseem that Beverly Seeman (and then her trust) owned represented a 25 percent ownership interest in the corporation. Ben Hayes, through his trust, also owned 25% of Joseem. Beverly Seeman's son (Dolinger's brother), Michael Seeman, owned the remaining 50 percent of Joseem, although when he died his ex-wife, Rosa Seeman, inherited his 50 percent interest in the corporation.

Attorney Michael C. Murphy drafted the trust for Beverly Seeman. The trust provided that upon Beverly Seeman's death the trustee would make $1,500 in monthly distributions to

Dolinger from the trust assets "each and every month" during Dolinger's lifetime. The trust further provided that, after Dolinger's death, the monthly distributions would cease, and the trustee would distribute 50 percent of the trust estate to Ben Hayes (or, if he predeceased Beverly Seeman, his issue) and 50 percent to Balderama (or, if she predeceased Beverly Seeman, her issue). Dolinger claims Ben Hayes was a friend, through his son Tim Hayes, of Murphy. Balderama was a part-time caregiver for Beverly Seeman.

The trust also provided that, in the event Beverly Seeman was unable or unwilling to serve as trustee, Ben Hayes would be the successor trustee, and that, if Ben Hayes were unable or unwilling to serve, Balderama would be the successor trustee. The trust provided that if both Hayes and Balderama were unable or unwilling to serve, then the court would appoint a corporate fiduciary as the successor trustee.

Beverly Seeman was the original trustee of the trust until she died in 2008. Ben Hayes apparently served as trustee until his death in July 2010, and Murphy represented Hayes as trustee. Thus, while he was alive, Ben Hayes was the trustee of both his trust and the Beverly Seeman trust, and Murphy represented Hayes as the trustee of both trusts. When Ben Hayes died, Murphy contacted Balderama and told her she was now the trustee.[1] Murphy also represented Balderama as the successor trustee.

The trust was able to distribute some of its assets sooner than others. Dolinger received the certificate of deposit from the

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[1] During their lifetimes Beverly Seeman and Ben Hayes had advised Balderama that she would be the trustee of the Beverly Seeman trust after Ben Hayes died.

bank in Burbank. She also received at least some of the personal property at Beverly Seeman's residence, although there was a dispute over whether she received all of it.

Distribution of the most significant asset in the trust, the 25 percent interest in Joseem, was delayed because the corporation was tied up in litigation. Apparently, in 2009 the corporation sold the real property it owned for approximately $560,000, but there was a dispute over how much of that money Rosa Seeman, the sole officer and director of the corporation, had improperly taken from the corporation and how much she was entitled to receive from the proceeds of the sale. Murphy, representing the trustees of the Ben Hayes trust and the Beverly Seeman trust, filed an action to dissolve the corporation, and at one point he obtained an order freezing the corporation's bank accounts. After several years of litigation, Murphy and counsel for Rosa Seeman were able to settle the lawsuit over Joseem, and the corporation made distributions to the Ben Hayes trust, the Beverly Seeman trust, and Rosa Seeman. The Beverly Seeman trust eventually received approximately $165,000 from the dissolution of Joseem. Most of this money went to taxes, attorneys' fees for Murphy, accountant fees, and costs of litigation. Dolinger received several distributions totaling approximately $25,000.

B. *The Petition and the Response*

On August 19, 2013 Dolinger filed a verified petition alleging Balderama, as the "second successor trustee," had breached her fiduciary duties as trustee of the trust and had converted Dolinger's "rightful inheritance from her mother." Dolinger alleged Balderama "failed to collect and protect" trust

assets, managed the trust assets improperly, failed to provide an accounting, allowed bank accounts and personal property to "disappear," refused to communicate with Dolinger, failed to make the trust assets productive, and "allowed depletion of the trust to continue unabated despite pleas" from Dolinger. Dolinger also alleged Balderama "breached her duty to enforce claims by taking no action to pursue assets that were owed to the trust such [as] bank accounts, material possessions, and distributions owed to Beverly Seeman from the estate of her son, Michael D. Seeman . . . ." Dolinger alleged Balderama had lost all but $25,000 of an estate that was worth between $200,000 and $600,000, and "failed to question the enormous fees and costs" incurred by Murphy in unnecessary litigation.

On September 6, 2013 Balderama, represented by Murphy, filed a response to Dolinger's petition. Among the many attachments to Balderama's response was a February 2, 2011 letter Murphy had sent to Dolinger's former attorney explaining the dispute and litigation regarding Joseem. Murphy's letter explained that the two 25 percent shareholders of Joseem, the Ben Hayes trust and the Beverly Seeman trust, had retained him to obtain the corporate books and records, dissolve the corporation, distribute the proceeds of the sale of its assets, and recover from Rosa Seeman money the two trusts claimed she improperly took or was misappropriating from the corporation. Murphy explained to Dolinger that the trusts had retained an accountant, Norman Kaye, to review the corporate books and records and to provide an opinion on how to distribute the

proceeds from the sale of the corporation's assets.[2] The response also included several letters from Murphy to Dolinger offering to provide her with copies, at her expense, of all trust bank records and tax returns.

C. *The Trial and the Decision*

After over a year of litigation, including several discovery motions, the trial court conducted a trial on Dolinger's petition. Dolinger was represented by counsel at the trial, as was Balderama (by Murphy). The only two witnesses were Balderama and Dolinger.

Neither witness said very much. Balderama essentially testified she did whatever Murphy told her to do. She started serving as trustee when Murphy told her to, she gave Murphy blank checks to pay his attorneys' fees and taxes, and she told Murphy to pay the accountants he had hired. She had little or no knowledge or understanding about the accounting summaries or other documents Murphy had prepared. Balderama testified, "I authorize[d] my attorney [Murphy] to do everything for me because I don't know anything." In response to a question by counsel for Dolinger about an exhibit, Balderama stated, "Ask my lawyer."

Dolinger testified she never received any accountings of the trust's assets. She also acknowledged she had received various letters and enclosures relating to the trust from Murphy, as well as distribution checks totaling approximately $25,000. Dolinger also testified she never received any income distributions from the trust.

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[2] Dolinger tried to intervene in the Joseem dissolution litigation, but the court in that case denied her application.

The trial court ruled in favor of Balderama and against Dolinger. The court noted that, assuming the personal property in the boxes was an asset of the trust, Dolinger received it, and there was no dispute Dolinger had received the certificate of deposit. Therefore, the court found there was no evidence of any conversion of personal property or the certificate of deposit. With respect to the 300 shares of Joseem, the court found "there had to be litigation in order to recover that trust asset," "everyone agreed" Rosa Seeman was the one who stole assets from the corporation, and Balderama as successor trustee had joined the litigation to recover trust assets. The trial court also found Balderama had not breached her fiduciary duties as trustee, there was nothing improper about the payments to the accountants in connection with the Joseem litigation, and the attorneys' fees incurred in the Joseem litigation were obligations of the trust. The trial court stated that "the prior trustee [i.e., Ben Hayes] had authorized the litigation and authorized those bills, so I find no breach that Ms. Balderama had stepped in and continued paying counsel, continued with the litigation," because "the only way to access those shares would appear to be that litigation." The court also found that Balderama pursued the litigation reasonably and in good faith under Probate Code section 16440.

Finally, on the issue of accountings, the court agreed with Dolinger that the information provided by Murphy "was not the typical accounting" and "did not have all the schedules and the various sums and assets that you might ordinarily have" in a trust accounting. Nevertheless, the court agreed with Balderama that "this was an unusual trust in that . . . the only asset [was] the shares of this corporation, and for the vast majority of the

time that Ms. Balderama was trustee, those shares were tied up in litigation." The court stated, "So while it isn't the typical accounting, I find that it is in substantial compliance and certainly provided Ms. Dolinger with every dollar as to what came in and where it went and what it was used for." The court found that the accounting summary Murphy prepared for Balderama was "sufficient to fulfill the fiduciary's obligations, especially under the circumstances of this case." The court concluded, "I think that Ms. Dolinger was really hoping that there would be more left in her mother's trust by the time she got the distribution, and a lot of that money was eaten up by litigation. That was very unfortunate, but I do find that the lawsuit ultimately was successful, or as successful as such things can be. There was a settlement. They got back what they could get for the trust. And the depletion of the assets that otherwise would have gone to Ms. Dolinger was due to the litigation and, ultimately, the fault of Rosa Seeman, not of the trustee."

The trial court entered judgment in favor of Balderama and against Dolinger. Dolinger appealed.[3]

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[3] Dolinger filed her notice of appeal 12 days before the trial court entered judgment. Although Dolinger filed the notice of appeal before entry of judgment, we exercise our discretion to hear her premature appeal. (See *Los Altos Golf and Country Club v. County of Santa Clara* (2008) 165 Cal.App.4th 198, 202 ["[b]ecause a judgment of dismissal has actually been entered, we will liberally construe the appeal to have been taken from the judgment of dismissal"].)

DISCUSSION

Dolinger does not directly challenge any of the trial court's rulings. Nor does she argue substantial evidence does not support the trial court's findings or the evidence compels a finding in her favor as a matter of law. (See *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769.) Instead, Dolinger argues the trial court denied her due process and a fair trial because of the combined effect of the court's rulings on several discovery motions, certain evidentiary rulings, and the denial of her request to continue the trial. Dolinger also contends the judgment should be reversed because of extrinsic fraud.

A. *The Trial Court Did Not Deny Dolinger Due Process or a Fair Trial*

1. *The Trial Court's Discovery Rulings Were Not Abuses of Discretion and Did Not Deprive Dolinger of Due Process*

During discovery Dolinger served subpoenas seeking documents from Chase Bank in Burbank, California, where Beverly Seeman had maintained some accounts. The subpoena contained 10 requests for production of documents. Balderama filed a motion to quash or modify the subpoena, objecting to eight of the 10 document requests on the ground that the requests did not identify the categories of documents sought with reasonable particularity under Code of Civil Procedure section 2020.510,

subdivision (a)(2),[4] and section 2031.030, subdivision (c)(1). For example, some of the document requests asked for information, such as account numbers and the dates accounts had been opened and closed, rather than documents. Balderama also argued the subpoena sought documents that were not relevant or reasonably calculated to lead to the discovery of admissible evidence and did not include proper consumer notices under section 1985.3.

The court granted Balderama's motion to quash and limited the production to the two categories to which Balderama had not objected. The court explained, "The financial institution who receives this, I've got to tell you, I don't understand how they're going to know what documents are going to be responsive or not." The court acknowledged that Dolinger was "trying to make a good faith effort to get this done," but the court was concerned that "the other party has no idea specifically what you are asking for, so it puts them in the difficult position of objecting to things." Noting that the bank would have the burden to locate and produce responsive documents, the court stated, "I've got to tell you, if I got this and I were working in the bank, I would have no idea what you're actually looking for."[5]

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[4] Undesignated statutory references are to the Code of Civil Procedure.

[5] There was some confusion about the court's ruling. The court granted the motion to quash the Chase subpoena in its entirety, but Balderama did not move to quash two of the document requests in the subpoena. The bank requested a written order signed by the court, which was delayed because the court had taken under submission (and ultimately denied) Balderama's request for monetary sanctions against Dolinger.

Dolinger also prepared subpoenas asking for documents from two accountants, Larry Barzman and Norman Kaye, who performed accounting and tax return preparation services for Ben Hayes, various members of the Seeman family, and Joseem, although Dolinger failed to serve one of the accountants with the subpoena. The subpoena to Barzman asked for documents regarding Beverly Seeman, the Estate of Michael Seeman, distributions to Ben Hayes, and copies of other records and checks. The subpoena to Kaye asked for statements, ledgers, tax returns, and billing statements regarding Beverly Seeman, the Estate of Michael Seeman, and Ben Hayes.

Dolinger filed a motion to compel Barzman and Kaye to comply with the subpoenas. Balderama filed an opposition to the motion to compel arguing, among other things, that Dolinger had not served one of the accountants with the subpoena, Dolinger had not served either accountant with the motion to compel, and Dolinger was seeking documents protected from production by

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When at a later hearing Murphy presented the court with an order to sign that granted the motion to quash all but two of the document requests, so that Chase could produce documents responsive to those requests, Dolinger stated that she had withdrawn the subpoena, essentially telling the court she wanted all of the documents, not some of them. The court nevertheless signed the order allowing production of documents responsive to the two non-objectionable requests, stating, "I think I'm doing you a favor, but maybe I'm not." When Dolinger told the court it was not doing her a favor, the court stated, "How could I not be doing you a favor? I'm giving you part of what you wanted, that is, two categories of documents you wanted from the bank, and I'm facilitating you getting the documents from the bank. I'm at a loss as to why—I feel like—I would have expected the argument from the other side, not from you."

the taxpayer privilege. The court denied the motion without prejudice, finding the motion was "procedurally and substantively deficient." The court stated it was not denying the motion "because Ms. Dolinger is not entitled to seek records from Mr. Barzman or Mr. Kaye. As argued by [Dolinger], Mr. Barzman already indicated in his response that he would not be able to produce any records absent a Court order. Ms. Dolinger merely failed to go about the process correctly." The court stated it was denying the motion without prejudice because "it was not served on the subpoenaed parties," and Dolinger would "have the opportunity to renotice those depositions. . . . If you do it the right way, you'll be entitled to take the depositions."

The trial court did not abuse its discretion in making any of these rulings regarding the subpoenas to Chase, Barzman, and Kaye.[6] The trial court properly granted Balderama's motion to quash the subpoena to Chase with respect to those requests that asked for information rather than documents or that did not describe the category of documents to be produced with sufficient particularity. (See § 2020.510, subd. (a)(2) [a subpoena must designate documents to be produced "either by specifically describing each individual item or by reasonably particularizing each category of item"]; *Calcor Space Facility, Inc. v. Superior*

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[6] See *Kirchmeyer v. Phillips* (2016) 245 Cal.App.4th 1394, 1402 ["[t]he standard of review for discovery orders in general is abuse of discretion"]; *Pirjada v. Superior Court* (2011) 201 Cal.App.4th 1074, 1085 ["[a] discovery order is normally reviewed under the deferential abuse of discretion standard," and a "'reviewing court generally will not substitute its opinion for that of the trial court and will not set aside the trial court's decision unless "there was 'no legal justification' for the order granting or denying the discovery in question"'"].

Court (1997) 53 Cal.App.4th 216, 218 ["a subpoena . . . must describe the documents to be produced with reasonable particularity"].) Most of the categories of documents in Dolinger's subpoena to Chase did not comply with these requirements. For example, Request No. 1 asked Chase to provide: "All bank account numbers ever held in the name of Beverly Seeman at Home Savings, Washington Mutual, and Chase Bank, including checking, savings, certificates of deposit, accounts in joint tenancy conservatorship accounts, and survivorship accounts." Request No. 2 read: "Please provide the opening and closing dates of these and any other accounts bearing the name of Beverly Seeman solely and jointly, and the information that any accounts that ever bore the name of Beverly Seeman, either solely or jointly, of Beverly Seeman, are still open." Two of the requests did describe the documents requested with sufficient particularity, and Balderama did not move to quash the requests for, and the court did not prevent production of, documents responsive to those requests.

Similarly, the court did not abuse its discretion in denying Dolinger's motion to compel compliance with the subpoenas to Barzman and Kaye without prejudice to Dolinger's right to reserve the subpoenas and refile the motions. Because Dolinger did not serve the accountants with her motion to compel, the court could not grant it. (See § 1005.) Indeed, because Dolinger had not served the subpoena on one of the accountants, the court lacked jurisdiction over that third party witness. (See §§ 1987, subd. (a), 2020.220, subd. (c); *Target Nat. Bank v. Rocha* (2013) 216 Cal.App.4th Supp. 1, 7 ["[w]hile the Legislature has provided many different modes of serving summons, only one mode, personal delivery, is available for serving a subpoena"].) Thus,

none of these discovery rulings was an abuse of discretion or deprived Dolinger of due process. (See *People v. Dejourney* (2011) 192 Cal.App.4th 1091, 1111 [due process claim premised on abuse of discretion fails where trial court did not abuse its discretion].)[7]

2. *The Trial Court's Denial of Dolinger's Ex Parte Application To Continue the Trial Was Not an Abuse of Discretion and Did Not Deprive Dolinger of Due Process*

On August 28, 2014, approximately two and a half weeks before the scheduled trial date, Dolinger filed an ex parte application, her second, to continue the trial and reopen discovery. Dolinger stated in her declaration that she had recently received a letter from a hospital in Mexico where she had been receiving cancer treatment that she needed a biopsy. Dolinger also stated that she had recently located a percipient witness, a former caregiver for Beverly Seeman, who had "first-hand knowledge of circumstances leading to the filing of this case" but who was currently ill in the Philippines. She also stated she had been unsuccessful in obtaining documents from Barzman and Kaye. Balderama opposed the ex parte application, arguing that Balderama had provided Dolinger with an accounting, Dolinger had not been diligent in following up on the

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[7] After the trial had been ended and the trial court had ruled on September 17, 2014, but before the trial court had entered judgment on November 24, 2014, Murphy received in the mail another subpoena Dolinger apparently had served in August 2014. Balderama moved to quash this subpoena as well. On November 24, 2014 the trial court granted the motion to quash and entered judgment.

third party subpoenas, and Dolinger had never served any discovery on Balderama. Murphy submitted a lengthy declaration in opposition to the ex parte application, describing the history and status of the litigation and claiming it was unfair to Balderama for Dolinger "to manipulate her claimed cancer condition for her benefit and to get the court's sympathy" and to ask the court to continue the trial while blocking Balderama's efforts to obtain discovery. Murphy argued at the hearing, "With respect to the trial, the concern that I really have is, we've litigated, litigated, litigated, and my client . . . just wants this case to be over."

On September 3, 2014 the trial court denied the ex parte application to continue the trial, although the denial was without prejudice. The court stated, "This has been going on for a while, and I know that there's been a number of opportunities to complete discovery, and so I am not inclined to reopen discovery at this point. You do have a trial date, Ms. Dolinger. I know that you have a medical situation, but it's not clear to me why you didn't already go down and get the biopsy done." The court stated that "if the biopsy is completed and everything is fine, then we can go ahead with the trial on the date you were given." The court indicated it had sympathy for Dolinger's medical issues, "but this case has been going on way too long, way too long." The court stated, "If there's a biopsy to be done, then you need to get it done and come back and go to trial." The court stated, however, that "if there's something further that needs to be done after you get [the biopsy], then submit a doctor's declaration or letter, signed, an original letter signed by a doctor indicating what further procedures need to be done and when those procedures will be completed." The court stated, and

Murphy stipulated, that if the biopsy showed further procedures were necessary, then the court would continue the trial for as long as the doctors indicated was medically necessary.

Dolinger argues "[t]here was no reason to not reset the trial date; the probate court was never under the time delay reduction program, and not only did [Dolinger] have no discovery, but she had a medical emergency, and her only and key witness was out of the country. To basically be told in a court of law that you must show mammograms or breast biopsy photos to get a continuance is conscience-shocking." Dolinger asserts that the court "would not continue the trial date, and a horrific experience followed . . . ."

The trial court did not abuse its discretion or violate Dolinger's due process rights in denying her request for a trial continuance and to reopen discovery.[8] The court carefully balanced the proximity of the trial date, Dolinger's potential health issue, the availability of alternative means to address the health issue, the prejudice to Balderama of a continuance, the possibility that an ill witness from the Philippines might travel to California to testify at the trial, the parties' opportunity to take discovery, and whether a continuance would serve the interests of

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[8] See *Estate of Smith* (1973) 9 Cal.3d 74, 81 ["[a] trial court has great discretion in the disposition of an application for a continuance," and "[a]bsent a clear abuse of discretion, the court's determination will not be disturbed"]; *Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246 ["[t]he trial court has discretion in ruling on requests to extend discovery deadlines or continue trial dates"]; see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1127 ["[t]rial continuances are disfavored and may be granted only on an affirmative showing of good cause"].

justice. (See, e.g., Cal. Rules of Court, rules 3.1332(c)(1), (d)(1), (d)(4), (d)(5), (d)(9), (d)(10).) The court was well within its discretion in concluding the prospects of an ill witness in the Philippines appearing for trial were uncertain, the parties had sufficient time to conduct discovery, and the record did not yet justify a continuance based on Dolinger's health. Nor was the trial court's request for information about Dolinger's medical condition improper. Courts commonly ask for a declaration or letter from a physician in connection with a request for a trial continuance based on a health-related issue. The trial court properly indicated it would continue the trial, without objection from Balderama, if Dolinger provided the court with a declaration or letter from a physician indicating Dolinger could not participate in a trial at that time but would be able to at a later time. (See Wegner, et al. Cal Practice Guide: Civil Trials and Evidence (The Rutter Group 2017) ¶ 1:378:2 ["[w]hen a continuance is sought because of illness of [a] party [citation], include a physician's declaration, if possible, stating the nature and anticipated period of incapacity" and "address[ing] the timing of the adverse medical circumstance"].)

3. *The Trial Court's Evidentiary Rulings Were Not Abuses of Discretion and Did Not Deprive Dolinger of Due Process*

Dolinger points to several evidentiary rulings the trial court made during trial and argues they prevented her from having a fair trial on the disposition of her mother's assets. For example, she argues the trial court unfairly struck part of her testimony stating that her uncle lived at Balderama's house "for

a cost of $3,500 a month." The testimony Dolinger cites was as follows:

"Q [Counsel for Dolinger]: Can you tell us about [Balderama's] relationship with your family?

"A: Well, the only relationship that I know of—it's not the whole family. It's my mother and my late uncle and myself. Mrs. Balderama has a large, I guess, 6,000 square foot, two-story house, and my uncle stayed there for care for a while.

"Mr. Murphy: "Your Honor, I'm going to move to strike this testimony as being irrelevant. What size my client's house is or whether her uncle stayed there is not relevant to anything.

"The Court: That will be stricken."

The court's ruling striking the testimony of the size of Balderama's house was not an abuse of discretion.[9] Evidence of the size of Balderama's house did not tend to prove or disprove any disputed issue in the petition or the response. (See Evid. Code, § 210 [relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action"]; *Coffey v. Shiomoto* (2015) 60 Cal.4th 1198, 1213 [""""[t]he test of relevance is whether the evidence tends, "logically, naturally, and by reasonable inference" to establish material facts""""].) The fact that a member of Dolinger's family had some kind of relationship with Balderama may have had some relevance to show how Balderama became a trustee and a beneficiary of Beverly Seeman's trust. Dolinger, however, identifies no prejudice that resulted from the exclusion of this evidence. (See *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th

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[9] See *People v. Vieira* (2005) 35 Cal.4th 264, 295 [order striking testimony is reviewed for abuse of discretion].

1332, 1348 ["to obtain a reversal based on the erroneous exclusion of evidence, the [appellant] is required to show a 'miscarriage of justice,' meaning that 'a different result was probable if the evidence had been admitted'"].)

Dolinger also contends she "was prevented from answering a question that may reveal Murphy's fraud." Murphy was questioning Dolinger about whether she had previously seen a series of documents, including Exhibit 21, which apparently was a document relating to the Joseem dissolution action. The testimony Dolinger cites was as follows:

"Q: Exhibit No. 21, do you have that in front of you?

"A: I have it in front of me. I've never seen it. I had no idea of this litigation.

"Q: Did you see this document during your deposition?

"A: If I did, it would have been that I thought it was something else, but I haven't seen anything from this litigation. I didn't even know about this litigation until, I don't know, February of 2011, and this is dated December 2009. When I see Judge Chalfant's name and 'ex parte,' if I said I had seen it before, I thought it was my ex parte to—asking for an accounting.

"Mr. Murphy: And I'm going to move to strike. None of this is responsive to my question.

"Q: My question is—

"The Court: Wait, wait. Let me rule. The motion to strike is granted. The question, Ms. Dolinger, is whether you've seen this document. Yes or no or you don't remember."

"The Witness: Correct.

"The Court: Which is it?

"The Witness: I'm sorry. I don't remember. If I said I remembered, I thought it was something else.

"The Court: No. Wait. Right now the question is just whether you've seen it, and you're saying you don't remember?

"The Witness: I don't remember. Sorry, Your Honor."

The record reflects that the question asked Dolinger whether she had seen a document before, and she answered she did not remember. The fact that she did not know about the Joseem litigation until over a year after the date of the documents was not responsive to the question. The trial court did not abuse its discretion or deprive Dolinger of due process by striking that part of her answer. (See Evid. Code, § 766 ["[a] witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party"]; *Gibbons v. Los Angeles Biltmore Hotel Co.* (1963) 217 Cal.App.2d 782, 788 [answers "unresponsive to the question" are "properly stricken"].)

Finally, Dolinger argues in her reply brief that the trial court struck testimony by her on direct examination that "goes to the heart of [her] complaint." The testimony Dolinger cites was as follows:

"Q [Counsel for Dolinger]: And why do you think that you haven't been provided an accounting?

"A: Because I've received nothing regarding my late mother as to distributions owed to her from my late brother, her bank accounts, her possessions, her money.

"Mr. Murphy: And I'm going to move to strike all of this testimony as being irrelevant. It's not part of this case. Her brother's trust is not alleged in this case. There's no allegation that my client was a trustee of her brother's trust or an executor, had anything to do with it. And I object to this line of questioning on the grounds its irrelevant.

"The Court: It wasn't clear to me from the testimony that she was testifying that this was—these were assets from her [brother's] trust, but if that is the case, then that would be stricken per prior rulings. The only issue is what's in this trust, her mother's trust.

"[Counsel for Dolinger]: Right. And I believe what she's talking about is Joseem, which is on Schedule A and is in this trust, but I am not sure. So maybe I'll ask her to clarify."

Murphy may have been confused about Dolinger's answer to the question. The trial court, however, was not. The court correctly understood Dolinger as saying that she believed she had not received an accounting because, according to Dolinger, she had "received nothing" regarding (1) her brother's trust, (2) her mother's bank accounts, (3) her mother's possessions, and (4) her mother's money. (Murphy appears to have heard the answer as "nothing regarding" distributions from her brother's trust to her mother.) To the extent the trial court struck any testimony by stating "but if that is the case then that would be stricken," the court only struck that part of Dolinger's answer regarding Dolinger's failure to receive information regarding (1) her brother's trust. Such a conditional ruling was not an abuse of discretion, and, as evidenced by counsel for Dolinger's statement to the court that he might ask his client to clarify her answer, did not prejudice Dolinger.

B. *Balderama Did Not Obtain the Judgment by Extrinsic Fraud*

Dolinger argues that the judgment should be reversed because "extrinsic fraud was perpetrated." She cites the examples of her stricken testimony and instances she claims the

trial judge did not allow her to be heard in court. As noted, the trial court did not abuse its discretion in ruling on Murphy's motions to strike nonresponsive testimony, and Dolinger has not shown the trial court precluded her from having her day in court. Dolinger was represented by counsel at trial, and her attorney had the opportunity to ask her proper follow-up questions about any answer the court may have stricken.

More important, Dolinger's argument is one of intrinsic fraud, not extrinsic fraud. Extrinsic fraud generally refers "to the narrow doctrine permitting a collateral attack on a judgment that has been obtained . . . under circumstances in which 'the aggrieved party [has been] deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense.'" (*Moore v. Conliffe* (1994) 7 Cal.4th 634, 643, fn. 5.) Where there is extrinsic fraud, "[a] final judgment may be set aside by a court if it has been established that extrinsic factors have prevented one party to the litigation from presenting his or her case." (*In re Marriage of Park* (1980) 27 Cal.3d 337, 342.) "'Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he [or she] has been "deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his [or her] claim or defense."'" (*Bae v. T.D. Service Company* (2016) 245 Cal.App.4th 89, 97; see *Department of Industrial Relations v. Davis Moreno Construction, Inc.* (2011) 193 Cal.App.4th 560, 570 ["[e]xtrinsic fraud only arises when one party has in some way fraudulently been prevented from presenting his or her claim or defense"].)

In contrast, "[i]ntrinsic fraud goes to the merits of the prior proceeding and is 'not a valid ground for setting aside a judgment

when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary but has unreasonably neglected to do so.'" (*In re Margarita D.* (1999) 72 Cal.App.4th 1288, 1295; see *Caldwell v. Taylor* (1933) 218 Cal. 471, 476 ["[a] showing of fraud practiced in the trial of the original action" is intrinsic fraud].) For example, "[i]ntrinsic fraud . . . involves the introduction of perjured testimony or false documents or the concealment or suppression of material evidence in a fully litigated case." (*Parsons v. Tickner* (1995) 31 Cal.App.4th 1513, 1532; see *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 10 [claim that "evidence has been suppressed, concealed, or falsified" is a claim of intrinsic fraud]; *Buesa v. City of Los Angeles* (2009) 177 Cal.App.4th 1537, 1546 ["the introduction of perjured testimony is a classic example of intrinsic fraud"].) Intrinsic fraud "cannot be used to overthrow a judgment, even where the party was unaware of the fraud at the time and did not have a chance to raise it at trial." (*Pour Le Bebe, Inc. v. Guess? Inc.* (2003) 112 Cal.App.4th 810, 828.)

Dolinger does not dispute she appeared at various court hearings and at trial, where she was represented by counsel. She asserts the trial court did not listen to her testimony and appeared to accept Murphy's arguments over hers, and she suggests Murphy presented false testimony, produced forged documents, and concealed financial records. For example, Dolinger asserts the reporter's transcript reveals "many instances of [her] not being allowed to be heard in court" and that her "papers were never read," which "became evident when [she] recognized the judges using Murphy's words." She contends Balderama "and her lawyer seem to be masters of fraud, and as

long as the judges let them get away with suborning perjury or bullying custodians of records, the extrinsic fraud will continue." These are all claims of intrinsic fraud. (See *Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 634 ["in a litigated case the concealment or suppression of material evidence is held to constitute intrinsic fraud"]; *American Borax Co. v. Carmichael* (1954) 123 Cal.App.2d 204, 208 [alleged misrepresentation by counsel regarding title to property was intrinsic fraud].) There is no basis for reversing the judgment because of extrinsic fraud.

DISPOSITION

The judgment is affirmed. Balderama is to recover her costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

KEENY, 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.