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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JACOB RUBIN et al.,

Plaintiffs and Respondents,

v.

CHAIM B. RUBIN,

Defendant and Appellant.

B277569

(Los Angeles County
Super. Ct. Nos. BP148305,
BP150575)

APPEAL from an order of the Superior Court of Los Angeles County, Leslie C. Green, Judge. Affirmed.

Revere & Wallace, Frank Revere, for Defendant and Appellant.

Blank Rome, Gregory M. Bordo, Christopher J. Petersen, and Harrison M. Brown, for Plaintiffs and Respondents.

Defendant and appellant Chaim Rubin appeals from an order confirming a conveyance of real property to the Rubin Family Trust dated May 7, 1990 (1990 Trust).¹ Chaim contends: (1) the order is precluded by a prior judgment, which determined that the property is not in the trust; and (2) the order violated his rights to due process by quieting title to property in a summary proceeding. We conclude the earlier probate judgment did not determine whether the property was conveyed by deed in 1990 to the 1990 Trust. Plaintiffs and respondents Jacob Rubin and Deena Zyskind, as co-trustees of the 1990 Trust, were not required to raise the trust's ownership claim in the earlier proceeding. We also find no violation of Chaim's due process rights, because he may dispute the 1990 Trust's claim at trial, including issues about the validity of the 1990 Trust. The order is affirmed.

FACTS AND PROCEDURAL HISTORY

Underlying Facts and Documents

Abraham Rubin and his wife Helen Rubin purchased a home on June Street in 1963. On May 7, 1990, Abraham and Helen executed the 1990 Trust. They were the settlors

¹ Because several of the parties and individual participants share the same last name, they will be referred to individually by their first names for clarity.

and the trustees.² The 1990 Trust stated that Abraham and Helen had five children: Chaim, Jacob, Chaskel, Zyskind, and Gloria Schonberger. Chaskel is a developmentally disabled adult.

The 1990 Trust also stated that the settlors are transferring and delivering to the trustees the property listed in an annexed Schedule “A,” and any cash, securities, or other property which the trustees may thereafter hold or acquire pursuant to any of the provisions of the trust. No Schedule “A” was attached to the copy of the trust submitted to the probate court in this case. The 1990 Trust allowed the settlors, jointly or individually, to add property of any kind to the trust estate, which would be subject to the terms and provisions of the trust as if it had been originally included.

The settlors could jointly amend any provision. Each settlor, acting alone, could also revoke the trust or withdraw any part of the trust estate as it pertained to that settlor’s portion of the trust estate. At the death of the first settlor, the remaining trustee would divide the trust estate into two trusts. Trust A would provide income for the surviving spouse’s lifetime. Trust B would be distributed outright to the settlor’s children in equal shares, except that Chaskel’s share would remain in trust.

Upon the death of both settlors, the 1990 Trust appointed Chaim, Jacob, Schonberger, and Zyskind as

² The document referred to Abraham and Helen as “trustors,” but we have used the term “settlors” to conform to the current terminology in the Probate Code.

successor co-trustees. The authority of any two successor co-trustees was sufficient to bind the trust estate. Shares set aside for the living children of the settlors were to be distributed outright, except that Chaskel's share would remain in trust.

On November 8, 1990, Abraham and Helen executed a quitclaim deed transferring their June Street home to the "Rubin Family Trust dated May 7, 1990."

A quitclaim deed was prepared some years later to transfer the June Street home from the "Rubin Family Trust" to the "Rubin Family Exemption Trust." Helen signed the quitclaim deed as trustee of the "Rubin Family Trust" in Los Angeles, California. Her signature is dated May 11, 1993. Her signature was notarized that day by Israel Grossman, who is a notary public in New York. The deed was not immediately recorded.

Grossman and his firm Pension Solutions in New York prepared two trust documents. The Rubin Family Exemption Trust (Exemption Trust) stated that Abraham was the settlor and Helen was the trustee. The date of the agreement was handwritten into the text as January 7, 1999, and it was to become effective on Abraham's death. The Exemption Trust was intended to amend and restate the "Rubin Family Trust."

Under the Exemption Trust, Helen would receive distributions during her lifetime. After Helen's death, successor trustees Jacob, Chaim, Schonberger, and Zyskind were appointed to act by majority vote. The successor

trustees could use the remaining principal and income in any amounts and proportions they deemed advisable. The document contained signature of Abraham and Helen, which Grossman notarized in New York.

The Exemption Trust stated that the property to be transferred to the trust was listed on an attached Schedule A. Schedule A was signed by Abraham as settlor and Helen as trustee, and dated January 7, 1999, but it did not list any property.

Grossman also prepared the Helen Rubin Irrevocable Trust dated January 4, 1999 (Irrevocable Trust). Helen was the settlor. Jacob, Chaim, Schonberger, and Zyskind were the trustees. The appointed trustees were to act by majority vote. They could use the income and principal of the trust for the settlor's children, grandchildren, and/or spouses, and/or charitable beneficiaries, in such amounts and proportions as the trustees deemed advisable. The document stated that Helen was transferring property listed on an attached Schedule A to the trust, but Schedule A did not list any property. Helen, Chaim, Jacob, Schonberger, and Zyskind signed the Irrevocable Trust agreement. Grossman notarized their signatures in New York.

Abraham died on January 17, 1999. Chaim moved in with his mother and Chaskel at the June Street property later that year. The quitclaim deed signed in 1993 to transfer the June Street property to the Exemption Trust was recorded on December 21, 1999. It stated that after recording, the deed and tax statements should be sent to

Abraham at the June Street address. Helen died on July 12, 2000. Chaim continued to live at the June Street property.

Petitions on behalf of the Irrevocable Trust and the 1999 Exemption Trust

Jacob, Schonberger, and Zyskind treated the June Street property as being held by the Irrevocable Trust. On September 14, 2009, Jacob, Schonberger, and Zyskind filed a petition to remove Chaim as a co-trustee of the Irrevocable Trust, compel him to vacate the June Street property and account for his actions as trustee, and to surcharge him for the use of the property. They withdrew the petition after they became aware of the 1993 deed transferring the property to the Exemption Trust. On November 9, 2009, Jacob and Zyskind filed a petition to remove Chaim as a co-trustee of the Exemption Trust, compel him to vacate the June Street property and account for his actions as trustee, and surcharge his use of the property.

The petition was consolidated for trial before Judge James A. Steele along with other disputes between the parties concerning the Irrevocable Trust and the Exemption Trust. The Irrevocable Trust, the Exemption Trust, and the 1993 deed transferring the property to the Exemption Trust were introduced as exhibits at trial. The 1990 Trust and the 1990 deed transferring the property to the 1990 Trust were not submitted as exhibits.

On September 19, 2013, Judge Steele issued a statement of decision. Judge Steele expressly stated that the

matter involved the Irrevocable Trust and the Exemption Trust. “As set forth below in some detail, the court finds that the June Street Property is not and was not the property of either of these trusts. In fact, there was some doubt in the court’s mind as to whether or not the trusts were and are in fact existing or valid since the instruments do not, as required by the precise manner in which they were drafted, identify any specific property and there had been no showing how or from whom the trusts received any property (Probate Code § 15202).”

Judge Steele noted that the Irrevocable Trust and the Exemption Trust both failed to enumerate the trust property even in the most general terms. Schedule A was blank in both documents. The court added, “If the transferor of the property (the Helen Rubin Irrevocable Trust) was not the owner of the assets, to the extent the interest, if any, of the transferor is conveyed to the transferee, it (the Rubin Family Exemption Trust) acquired nothing. [¶] The court also notes that even if there might be some logical explanation for the apparently irreconcilable dates between the various trusts and transfer transactions as explained below, since neither of the trusts list the June Street Property, or any other property, as being owned by either of those trusts, the June Street Property is not trust property.”

Judge Steele stated that although there might be a basis to find the non-existence, and therefore the invalidity, of each of the trusts for failure to generally refer to the trust property or include a schedule of any specific property, the

court presumed personal property, including cash, was likely transferred by the settlor at some point. The court explained its finding that the June Street Property, however, was not trust property. “Here, it was claimed in the verified pleadings and during the proceedings that the June Street Property came to be owned by the Exemption Trust having been transferred to same pursuant to the 5/[11]/93 Quitclaim Deed executed by Helen Rubin on behalf of the ‘Rubin Family Trust’. The deed transferring the June Street Property was not recorded until 12/21/99; more than 6 years following its initial execution”

“Firstly, the court finds the June Street Property was not owned by the ‘Rubin Family Trust’ at the time of its alleged transfer to the Exemption Trust. It is the court’s understanding that what has been referred to as the ‘Rubin Family Trust’ is and was actually the Helen Rubin Irrevocable Trust (Trial Exhibit 2). However, that trust did not come into existence on or before the purported transfer date in 1993 but instead first came into existence in January 1999. Similarly, the Rubin Family Exemption Trust (Trial Exhibit 10), the purported transferee as contended by Jacob et al., was also not in existence at the time of the purported transfer. Therefore, even if the June Street Property had actually been property of the Helen Rubin Irrevocable Trust, which does not appear to have been the case in any event, there is no credible evidence that the June Street Property was ever transferred into the Exemption Trust as claimed. This is also consistent with the manner in which Jacob et al.

accounted for this property in Trial Exhibit 1 and is further confirmed by the Helen Rubin Irrevocable Trust Minutes of 2/26/01 which indicate, at least as of that date, that the June Street Property purportedly belonged to that trust The questionable circumstances regarding the purported January 1993 transfer were further underscored by Chaim's unchallenged testimony that in January 1999 at the time his father Abraham supposedly signed the Exemption Trust, his father was not only hospitalized, but in a coma."

"Given the informal manner in which the parties have treated these issues over the years, it was not at all surprising that the parties exhibited confusion and inconsistency regarding the identities of the various trusts and how they were administered. For example, during trial the parties seemed to use the term 'Family Trust' to refer to more than one such instrument and referred to one or other of the trusts owning the same assets at the same time. For example, Jacob et al.'s 9/14/09 Petition . . . on behalf of the Helen Rubin Irrevocable Trust, sought various orders including [Chaim's] removal from the June Street Property which was then purportedly owned by this trust. That Petition was thereafter withdrawn and re-filed by Jacob and [Zyskind] on behalf of the Rubin Family Exemption Trust as the purported owner of the June Street Property. Nevertheless, the Account . . . would indicate that the real properties, including the June Street Property, were deemed part of the Helen Rubin Irrevocable Trust."

“In light of all the foregoing, the court finds that the June Street Property was not property of the Helen Rubin Irrevocable Trust in 1993 at the time of the purported transfer, was not the property of the Exemption Trust at the time of the purported transfer and to this day, is not the property of either. While under certain circumstances a deed might establish the trust nature of real property [citation], such was not the case in this instance. The June Street Property is therefore likely to become the subject of one or more probate proceedings to be filed.”

Since the June Street property was not a trust asset, Chaim’s tenancy was not subject to the probate court’s jurisdiction. The court denied the petition concerning the June Street property.

On February 18, 2014, Judge Steele entered an order ruling on multiple petitions, including: “5. That the June Street Property is not and was not the property of the Helen Rubin Irrevocable Trust dated January 4, 1999 and the Rubin Family Exemption Trust dated January 7, 1999. Denial of relief is based on the court’s determination that it has no jurisdiction over the dispute. [¶] 6. In Case No. BP 119 526, Jacob and [Zyskind’s] Petition on behalf of the Rubin Family Exemption Trust for Orders removing Chaim as a co-Trustee filed November 9, 2009, compelling Chaim to vacate the ‘June Street Property’ and compelling Chaim to account and for surcharge: DENIED. [¶] 7. That the trust instruments creating the Helen Rubin Irrevocable Trust dated January 4, 1999 and the Rubin Family Exemption

Trust dated January 7, 1999 both make no mention of any specific property and there was no showing how or from whom these trusts received any property (Probate Code § 15202).”

The Instant Petition

On January 6, 2014, Jacob and Zyskind filed the instant petition in the matter of the 1990 Trust to remove Chaim as a co-trustee of the 1990 Trust, to compel him to vacate the June Street property, and to surcharge his use of the property for the period from 2008 to the present.

Chaim opposed the petition on the grounds that removal of a co-trustee required the action of a majority of the adult beneficiaries. He also claimed the petitioners used trust property to their personal advantage, failed to account for their actions as trustees, refused to provide information concerning trust property, failed to administer the trust, and took undisclosed distributions. He argued that the petitioners had never accounted nor commenced administration of the 1990 Trust before filing the instant petition. The assets had been administered previously under the Irrevocable Trust. He named five properties in addition to the June Street property that he claimed should be subject to disposition under the 1990 Trust. He requested that the court appoint a neutral trustee to marshal and distribute the assets in accordance with the terms of the 1990 Trust.

On March 25, 2014, Chaim filed a petition to remove Jacob, Schonberger, and Zyskind as trustees of the 1990 trust and to appoint a neutral trustee of all trusts. On May 6, 2014, Chaim filed a supplemental petition seeking construction of the 1990 Trust and a determination that the beneficiaries were entitled to immediate distribution.

A hearing was held in the probate court before Judge Leslie C. Green on May 4, 2016, to consolidate the petitions for purposes of trial. Judge Green noted that Jacob and Zyskind would have to prove the June Street property was held by the 1990 Trust, when Judge Steele had found it was not. Chaim's attorney noted that Judge Steele was aware there were two trusts at issue in the earlier proceeding, based on the deed from the Rubin Family Trust to the Exemption Trust. Judge Green noted that the prior findings concerned the Irrevocable Trust and the Exemption Trust, but that the legal requirements applied to the 1990 Trust as well. She added, "And I just don't want to spend three or four more trial days revisiting the same issues unless there's something that very explicitly shows from the outset that the June Street property is held by the [1990] Trust. [¶] And you're telling me you have that?" Jacob's and Zyskind's attorney stated, "I can bring a certified deed and, perhaps, maybe a short hearing, you know, in the very near term to resolve this issue before setting these for trial would make sense."

Based on the earlier judgment, Judge Green added, "[T]here's no point in going forward with a trial here unless

there's something that show that, while this statement may be true in that the Rubin Family Trust did not own it at the particular time he refers to, it owned it at some other time" She asked Jacob's and Zyskind's attorney to provide the deed and some briefing. She continued the trial setting conference and gave Chaim an opportunity to respond. The court stated that it was not technically a motion, but the court anticipated hearing argument and would make a ruling at the trial setting conference.

Both parties submitted briefs with exhibits as to whether the June Street property was held by the 1990 Trust or whether ownership had been determined by the earlier probate court proceeding. In a supplemental bench brief, Jacob and Zyskind submitted a copy of a declaration executed by Helen in 1993 in connection with an unrelated matter. Helen declared that she and Abraham "established the Rubin Family Trust on May 7, 1990." They transferred the June Street property "to the Trust on or about November 8, 1990."

A trial setting conference was held on July 13, 2016. Judge Green found that the 1990 Trust held the June Street property based on the 1990 deed. The court found it was a valid deed, which was a matter of public record, and the issue had not been determined by the prior probate court proceeding. Chaim argued that the 1990 Trust was not legally formed, because no schedule of assets was attached to the 1990 Trust and the deed was not contemporaneous with

the creation of the trust. Judge Green stated Chaim could present evidence at trial that the 1990 Trust was invalid.

The minute order reflects Judge Green's ruling that the June Street property is an asset of the 1990 Trust. Chaim filed a timely notice of appeal from the July 13, 2016 order, in accordance with Probate Code section 1300, subdivision (a).³ Jacob and Zyskind filed a motion to dismiss the appeal on the ground that the ruling at the trial setting conference was not an appealable order, which was opposed by Chaim. We denied the motion to dismiss because Probate Code section 1300, subdivision (a) allows an appeal from an order confirming the conveyance of property.

DISCUSSION

Standard of Review

The material facts are undisputed for the purposes of this appeal. We review the applicability of the doctrine of claim preclusion or issue preclusion de novo. (*Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1507 (*Johnson*); *Noble v. Draper* (2008) 160 Cal.App.4th 1, 10.)

³ “In all proceedings governed by this code, an appeal may be taken from the making of, or the refusal to make, any of the following orders: (a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.” (Prob. Code, § 1300.)

Preclusive Effect of Judgment

Chaim contends the claims in this case are precluded by Judge Steele’s findings that the Rubin Family Trust had no title to transfer in 1993, and no trust holds title to the June Street property, including the 1990 Trust. This contention is based on a selective misreading of portions of the statement of decision. It is clear from the judgment and the statement of decision that the claims and issues in this appeal were not determined by Judge Steele.

The doctrine of res judicata has two aspects—claim preclusion and issue preclusion. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 (*DKN Holdings*).) “*Claim preclusion* ‘prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.’ [Citation.] Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties [or those in privity with them] (3) after a final judgment on the merits in the first suit. [Citations.] If claim preclusion is established, it operates to bar relitigation of the claim altogether.” (*Ibid.*; *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 (*Mycogen*); *Johnson, supra*, 166 Cal.App.4th at pp. 1507–1508.) The claim is precluded if the cause of action could have been brought in the prior action, whether or not it was actually asserted or decided. (*Busick v. Workmen’s Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 974–975.) The doctrine promotes judicial economy and avoids piecemeal litigation by preventing a plaintiff from

““splitting a single cause of action or relitigat[ing] the same cause of action on a different legal theory or for different relief.”” (*Mycogen, supra*, at p. 897.)

Issue preclusion, historically referred to as collateral estoppel, “prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. [Citation.] Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action.” (*DKN Holdings, supra*, 61 Cal.4th at p. 824.) The doctrine applies “(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” (*Id.* at p. 825.) The doctrine differs from claim preclusion because it is a conclusive determination of issues, but does not bar a cause of action. (*Ibid.*) Even if the minimal requirements for issue preclusion are satisfied, courts will not apply the doctrine if policy considerations outweigh the doctrine’s purpose in a particular case. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342–343.)

Chaim has taken portions of Judge Steele’s statement of decision about “the Rubin Family Trust,” which was expressly defined to mean the Irrevocable Trust, and extended them to issues that were not under consideration in that case. The statement of decision is clear that Judge Steele’s findings concerned the ownership claims of the Exemption Trust and the Irrevocable Trust only, and that

the term “Rubin Family Trust” in the statement of decision referred to the Irrevocable Trust. Judge Steele found that the Irrevocable Trust had no interest in the June Street property to transfer to the Exemption Trust in 1993. The judgment in the earlier case is explicit—Judge Steele ruled that the June Street property is not owned by the Exemption Trust or the Irrevocable Trust. The 1990 Trust was not even submitted as an exhibit at trial in the prior case and was not mentioned in the judgment. Ownership by the 1990 Trust was not an issue decided in the prior case. Judge Green’s order, made at the trial setting conference in this case, does not modify or change the judgment in the prior proceeding.

The trustees of the 1990 Trust are not the same parties as the trustees of the Exemption Trust or the Irrevocable Trust. There are different requirements for action to be taken on behalf of the 1990 Trust, and the trustees have different responsibilities to the beneficiaries. Even if Judge Steele had granted the petition in the earlier case to remove Chaim as a co-trustee of the Exemption Trust and the Irrevocable Trust, Chaim would have continued to be a co-trustee of the 1990 Trust.

Chaim contends that even if the issue of ownership by the 1990 Trust was not determined by the earlier judgment, the claim is precluded because it could have been raised in the earlier proceeding. This is also incorrect. The 1990 Trust did not have a claim to ownership of the June Street property until the probate court entered a judgment that invalidated the 1993 deed of transfer. “If a transfer to a

trust is invalid, the legal title to the property remains in the grantor.” (*Osswald v. Anderson* (1996) 49 Cal.App.4th 812, 820.) After the judgment was entered invalidating the 1993 deed, the 1990 deed was left as the operative deed in the chain of title. It would have made no difference to the judgment in the first case if the 1990 Trust had been introduced as an exhibit to clarify the grantor of the 1993 deed. The 1993 deed was not a valid transfer of the property to the Exemption Trust because the Exemption Trust was not in existence at the time of the ineffective attempted transfer. The property was transferred to the Exemption Trust contemporaneous with its creation or after it came into existence. The trustees of the 1990 Trust were not required to pursue claims under the 1990 deed, however, while the recorded deed transferred the property to another entity.

Issues Remaining for Trial

Chaim contends the existence and validity of the 1990 Trust had to be adjudicated before the probate court could determine that the 1990 Trust owns the June Street property. The trial court expressly stated, and the parties agree, that Chaim may challenge the validity of the 1990 Trust at trial. The result of the trial in this case may invalidate the deed or the 1990 Trust’s claim to ownership. Issues concerning the validity of the 1990 Trust can be adjudicated after an initial ruling that a recorded deed exists conveying the property to the 1990 Trust. Chaim chose to

appeal the trial court's ruling confirming that the property was conveyed by deed to the 1990 Trust while issues affecting the ownership of the property remain to be determined at trial. After opposing respondents' motion to dismiss the appeal as premature, he cannot complain on appeal that the ruling was premature and incomplete.⁴ We need not address Chaim's contentions concerning the validity and construction of the 1990 Trust, as those issues remain to be resolved at trial.

Due Process

Chaim contends that the probate court quieted title to real property through a motion procedure in violation of Chaim's due process rights. We disagree.

"Due process principles require reasonable notice and opportunity to be heard before government deprivation of a significant property interest." (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612; *Israni v. Superior Court* (2001) 88 Cal.App.4th 621, 633.) "The guarantee of procedural due

⁴ Judge Green's determination that the 1990 Trust held title to the June Street property was required to invoke the jurisdiction of the probate court. Had the 1990 Trust not been on title, the proper forum for this litigation would have been in a different probate proceeding or even a court of general jurisdiction. (See *Schlyen v. Schlyen* (1954) 43 Cal.2d 361, 377–378 [court of general jurisdiction has authority to resolve disputes not properly before the probate court.]

process—a meaningful opportunity to be heard—is an aspect of the constitutional right of access to the courts for all persons, without regard to the type of relief sought.” (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 338–339.) Although due process encompasses a broad range of safeguards, in essence the concept guarantees a fundamentally fair decision-making process. (*People v. Ramos* (1984) 37 Cal.3d 136, 153.)

The probate court’s order in this case does not quiet title to the property, because the parties agree that Chaim may raise issues affecting ownership at trial. Judge Green simply ruled that the issue of whether the 1990 Trust owned the property had not been determined by the prior judgment and confirmed that the property was conveyed by a deed that was valid on its face to the 1990 Trust, leaving all other issues for trial. The court’s order is not a final judgment quieting title to the property. Chaim had notice of the hearing and the issue to be decided. The probate court ordered briefing, and informed the parties that the court would hear argument and make a ruling at the trial setting conference. Chaim also had an ample opportunity to be heard. He submitted briefing and evidence, and he provided argument on the issues at the hearing. Chaim has never disputed that a deed was recorded in 1990 to convey the property to the 1990 Trust, which is the fact confirmed by the probate court’s order.

DISPOSITION

The order is affirmed. Plaintiffs and respondents Jacob Rubin and Deena Zyskind, as trustees of the Rubin Family Trust dated May 7, 1990, are awarded their costs on appeal.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

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