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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

AUDREY LOCKETT,

Plaintiff and Appellant,

v.

LEE A. LOCKETT,

Defendant and Respondent.

B250530

(Los Angeles County  
Super. Ct. No. TP003265)

APPEAL from a judgment of the Superior Court of Los Angeles County. Daniel S. Murphy, Judge. Affirmed.

Audrey Lockett, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Audrey Lockett (Audrey) appeals from a judgment entered after a court trial on Audrey's objections to a final accounting and two prior accountings.<sup>1</sup> Audrey and Lee A. Lockett (Lee) were cotrustees and equal beneficiaries of the Lockett Family Trust (Trust). At the conclusion of the trial, the probate court disallowed certain expenses claimed as credits by Lee, split the cash proceeds in the Trust equally between Audrey and Lee, found that both trustees had breached their fiduciary duties, and declined to award attorney fees or assess a surcharge against either party. Audrey contends that the probate court erred in its evidentiary rulings and that the court's findings were not supported by substantial evidence.<sup>2</sup> We disagree and affirm.

## **BACKGROUND**

### **The Trust and the petitions**

On March 14, 2006, Johnnie Lockett (Johnnie) executed the Trust, naming Lee and Audrey as cotrustees and beneficiaries. On October 18, 2006, Johnnie died. On May 7, 2007, Audrey filed a petition to compel Lee to provide financial documents and an accounting, to remove Lee as cotrustee, and for a partition and sale of Trust property consisting of real property located in Los Angeles (real property). Lee objected to the petition and filed a counter petition to remove Audrey as cotrustee.

On April 8, 2008, Lee filed a first accounting summarizing the value of the Trust assets and total expenses from October 18, 2006, through April 7, 2008 (first accounting). After a November 2008 trial, the probate court filed an order on July 27, 2009. Among other things, the court denied the parties' respective requests to remove the other as a trustee. The court concluded that the \$25,000 received by Audrey in October 2006 constituted an advance from the Trust, for which Lee would be entitled to an offset in an equal amount upon sale of the remaining Trust property. Additionally, the court determined Lee would be entitled to an offset of \$42,903.86, consisting of various funds

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<sup>1</sup> We refer to the parties by their first names to prevent confusion and mean no disrespect by doing so.

<sup>2</sup> Lee did not file a responding brief.

that he had advanced the Trust, including funds for Johnnie's funeral expenses, property taxes, homeowners insurance, and repairs to the real property.

On December 14, 2009, Audrey executed an "Assignment of Interest" in favor of Advance Inheritance, LLC (Advance). Pursuant to that assignment, Advance filed a petition on April 29, 2011, for an order to require Lee to place the property with Audrey so that she could list the property and execute a sale without requiring Lee's signature and to file a second accounting; Advance also sought reimbursement of attorney fees and costs.<sup>3</sup> On June 7, 2011, Lee filed a counter petition for removal of Audrey as cotrustee.

After a hearing, in an order filed on October 31, 2011, the probate court ordered Audrey removed permanently as cotrustee of the Trust. The probate court appointed Lee as sole trustee and ordered him to sell the real property and deposit the sale proceeds into a blocked bank account. Additionally, the court ordered Lee to file a verified pleading, indicating his best efforts to sell the real property.

#### **The second, third, and fourth accountings and sale of the real property**

On August 2, 2011, Lee filed a second accounting stating, among other things, that from April 8, 2008, through June 7, 2011, the Trust received income of 19 months' rent at \$600 per month and two months' rent at \$1,400 per month (second accounting). On April 13, 2012, Lee filed a third accounting stating, among other things, that from June 7, 2011, through April 5, 2012, the Trust received rent for six months at \$600 per month and rent for two months at \$800 per month (third accounting). The third accounting stated that a tenant moved out in February 2012 after being harassed by Audrey and that the tenant was refunded rent and given an emergency moving expense, totaling \$2,000.

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<sup>3</sup> On February 9, 2015, pursuant to Government Code section 68081, we requested clarification on Advance's role in the probate proceedings after it filed its petition on April 29, 2011. Audrey responded to our letter on February 15, 2015. In her response, she attached pleadings from the probate court evidencing that the assignment was only as to payment of \$22,000 out of the estate, and that on March 8, 2013, Advance had withdrawn the "Assignment of Beneficial Interest for *Audrey Lockett* in Decedent's Estate filed in the above estate" because Advance had received full payment of the \$22,000.

On July 6, 2012, the real property was sold for \$170,000 and the net proceeds of \$150,236.42 were placed in a blocked account. On December 12, 2012, Lee filed a “corrected fourth and final account and report and petition for final distribution” (fourth accounting). On February 14, 2013, Audrey filed a declaration objecting to the fourth accounting. Her objections criticized Lee for filing false accountings, failing to maintain separate Trust and personal accounts, renting the real property at below market rents as demonstrated by data on a HUD Web site, not maintaining the property properly, and refusing her offers to buy out his interest in the property. Lee filed supplements to the corrected fourth accounting on February 20, 2013, and April 5, 2013.

### **The court trial**

At the trial held on April 25, 2013, the probate court excluded as hearsay some exhibits submitted by Audrey, including “4 pages of probate notes . . . [and] 4 pages of homes for rent.” Among other exhibits, the court received into evidence Audrey’s 12-page declaration. The court sustained Audrey’s objections to two of Lee’s exhibits and received several exhibits into evidence, including the first trust accounting, second trust accounting, accounting of cotrustee, termite billing, a residential lease, and two residential listing agreements.

Audrey called Lee as a witness. Lee testified that between 2006 and 2008, he had not rented out the real property because the house was “suppose [*sic*] to be sold.” During that time, Edgar Fernandez lived rent-free on the property as caretaker. At one point, a title company had rented the real property to Edwina Denise Brown-Harvey for \$1,400 month. After Audrey harassed the tenant by turning off the electricity, Lee had to reimburse the tenant for “lost food and time.” Subsequently, Lee rented out the real property for \$600 per month. He testified that he rented the real property for “less than half the value” he previously charged for rent because the property was in bad condition and needed major repairs. In response to Audrey’s question regarding specifics of her harassment of the tenants, he testified that Audrey had told the last tenant she was going to “call immigration on them” and that “their child is a little bastard.” Lee stated he had

tried to sell the real property five or six times, but Audrey refused to sign agreements that would have enabled him to sell the property.

Audrey called herself as a witness and testified that she obtained a loan to buy Lee out, but he refused to cooperate. Her testimony that previous tenants had told her they were paying \$1,600 per month for renting the real property was excluded as hearsay, but the court allowed her to testify as to her opinion of the property's rental value. She testified that she believed the fair rental value of the real property was \$1,500 per month. On cross-examination, Audrey testified that she signed listing agreements in 2006 and 2007 with brokers to sell the real property. She also identified letters in which she informed tenants that their leases were invalid and that she was terminating their leases.

Lee testified on his behalf that he had signed listing agreements in 2006 and 2007. After the 2007 listing agreement expired, his attempts to get Audrey to sign listing agreements in 2009 and 2010 were unsuccessful. After Lee was appointed sole trustee, he entered into a listing agreement with Tower Realty, which procured a buyer for the real property, and escrow on the real property closed on July 6, 2012. Lee also identified a residential rental agreement dated October 1, 2008, between the Trust and Edwina Denise Brown Harvey.

### **The statement of decision**

After taking the matter under submission, the probate court filed a proposed statement of decision. After taking into account Audrey's objections and Lee's response, the probate court filed its final statement of decision on May 24, 2013, which we now summarize in pertinent part. As to the second accounting filed on April 2, 2011, the probate court found that Lee failed to present evidence to support the following credits: \$2,800 for tenant relocation costs; \$3,000 for carpet costs; and \$1,535 for advancement of trust expenses. Because Lee breached his fiduciary duty by not separating his personal and the Trust's assets, the court disallowed Lee's payment to himself of \$5,700 in trustee fees and declined to reimburse his attorney fees.

As to the third accounting filed on April 13, 2012, the probate court found Lee failed to present evidence to support the following credits: \$2,000 for a tenant refund and

moving expenses and \$1,459 for advancement of trust expenses. Because Lee breached his fiduciary duty by not separating his personal from the Trust's assets, the court disallowed \$1,350 in trustee fees to Lee. The probate court also found that Audrey had breached her fiduciary duty by abandoning her obligations as a cotrustee when she failed to participate in the administration of the Trust. The court disallowed payment of trustee fees to Audrey or reimbursement of attorney fees.<sup>4</sup>

As a final accounting, the probate court determined the amount available for distribution to Audrey and Lee was \$150,193.84 (\$132,349.84 plus \$17,844 in credits advocated by Lee that were disallowed by the court); as equal beneficiaries, Lee and Audrey were thus each entitled to \$75,096. The court deducted the following from Audrey's distribution: \$58,000 in prior distributions (consisting of distributions of \$1,000, \$22,000, \$25,000, and \$10,000; \$800 (move out fee); \$285 (for Audrey's share of a termite fee); and \$1,305 (court filing fees to be paid to the court to compensate for her fee waiver). After these deductions, Audrey was entitled to a distribution of \$14,706.92. The court ordered the remaining cash in the Trust to be distributed to Lee, less his attorney fees and costs. The court declined to surcharge either party.

A notice of entry of order was filed on May 29, 2013. This appeal followed.

### **DISCUSSION**

The appellant's responsibility on appeal is affirmatively to demonstrate error and support his or her argument by citation to the record and supporting authority. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455.) Audrey has failed to do so here.

#### **Substantial evidence supported the probate court's statement of decision**

Audrey argues that substantial evidence did not support the probate court's conclusion that Lee received rental fees in the amount of \$600 per month because he did not show proof of a lease agreement. In seeming contradiction, she also urges that "[n]o evidence points to any indication that Lee did not rent the property at all times throughout

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<sup>4</sup> We note that Audrey was self-represented at trial.

the six year period.” She claims that substantial evidence also did not support the court’s finding that she breached her fiduciary duty to the Trust.

We review the probate court’s express and implied findings of fact for substantial evidence. (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 501.) We must determine whether there was substantial evidence, contradicted or uncontradicted, that supports the court’s decision. (*Ibid.*) “Substantial evidence is evidence of ponderable legal significance, reasonable in nature, credible, and of solid value. [Citation.]” (*Ibid.*) In reviewing the sufficiency of evidence, we must also view all factual determinations most favorably to the prevailing party and in support of the judgment. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925.) “‘In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*’ (6 Witkin, Cal. Procedure [(2d ed. 1971)] § 249, at p. 4241.) All conflicts, therefore, must be resolved in favor of the respondent. [Citation.]” (*Nestle*, at pp. 925–926.)

Lee’s direct testimony constitutes substantial evidence supporting the probate court’s finding that Lee rented the real property for \$600 per month.

We construe Audrey’s argument that “[n]o evidence points to any indication that Lee did not rent the property at all times throughout the six year period” as an assertion that Lee rented the real property during the time he stated he was not renting it and pocketed the proceeds. Indeed, Audrey argues that “[a]t all times, Lee operated the property as his sole asset[.]” Without any citation to evidence in the record, this argument is mere speculation. Accordingly, the argument is waived. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [if an appellant fails to support his or her argument with citation to the record, the argument is waived; the appellate court is not required to search the record to find error]; *Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007 [points not supported by cognizable legal argument or proper citation to authority are deemed waived].)

Substantial evidence supports the court’s finding that Audrey breached her duty to the Trust by abandoning it. (Prob. Code, § 16012, subd. (a) [trustee has duty not to

delegate entire administration of trust to cotrustees].) There was evidence that Audrey refused to sign listing agreements in 2009 and 2010. There was evidence that she harassed tenants into leaving by sending them letters stating that their leases were invalid and that she was terminating the leases. She frightened tenants by threatening to report them to “immigration.” She turned off the electricity for a tenant, resulting in the Trust’s being required to reimburse the tenant for rent and other expenses. The evidence supports that Lee maintained, rented, and sold the real property, without help from Audrey. Accordingly, we conclude the evidence supported the court’s finding that Audrey breached her fiduciary duty.

**Audrey has failed to demonstrate that the probate court erred in its evidentiary rulings**

Audrey claims the court erred in allowing “expenses” not authorized by Audrey as cotrustee. Audrey failed, however, to specify what evidence she claims was improperly admitted and to support her argument with legal authority or citation to the record. We are under no obligation to do so for her. (*Nwosu v. Uba*, *supra*, 122 Cal.App.4th at p. 1246; *Berger v. California Ins. Guarantee Assn.*, *supra*, 128 Cal.App.4th at p. 1007.)

Audrey also contends the probate court erred in excluding Audrey’s evidence of the fair market rental value of real property belonging to the Trust. The probate court properly excluded evidence of statements purportedly made to Audrey by tenants as to the rental value as inadmissible hearsay. (Evid. Code, § 1200 [inadmissible hearsay evidence is evidence of statement made other than by a witness while testifying at hearing that is offered to prove the truth of the matter stated].) Even if the court erred, Audrey suffered no prejudice where the probate court allowed her to testify directly as to her knowledge of the fair market rental value of the property.

Finally, Audrey does not articulate a legal argument as to why she believes the probate court erred in admitting Lee’s testimony regarding the rental value of the property. This argument is thus waived.



**Audrey’s arguments inappropriately ask us to reassess the probate court’s evaluation of the evidence**

Audrey contends that Lee disobeyed court orders to sell the real property, used the real property as his “sole asset,” and “committed perjury both in written and verbal testimony.” She argues that although Lee did not provide any real estate listings to show he attempted to sell the real property, in contrast, she produced evidence of her attempts to buy out his interest in the real property.

To the extent Audrey asks us to redo the probate court’s credibility assessments or weighing of the evidence, we decline to do so. (*Anderson v. State Personnel Bd.* (1980) 103 Cal.App.3d 242, 251 [appellate court cannot reweigh evidence or assess credibility of witnesses].) Audrey’s argument that she produced evidence of her offers to buy out Lee does not appear relevant to any appealable issue before us. There was also substantial evidence that Lee successfully listed and sold the property after Audrey was removed as cotrustee.

**DISPOSITION**

The judgment is affirmed.  
NOT TO BE PUBLISHED.

BENDIX, J.\*

We concur:

CHANEY, Acting P. J.

JOHNSON, 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.