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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| PERRY BLOOM,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>LIFE SERVICES, INC.,<br><br>Defendant and Respondent. | B270532, B270534<br><br>(Los Angeles County Super. Ct. Nos. BP087155, BP138542) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Lesley C. Green, Judge. Affirmed.

Shapero & Shapero, Steven J. Shapero and Martin M. Shapero for Plaintiff and Appellant.

Law Offices of Vikram Brar, Vikram Brar and Manisha V. Kapoor for Defendant and Respondent.

In October of 2014, Perry Bloom filed a petition for breach of fiduciary duty against Life Services, the former conservator of his parents and their estates. The petition alleged Life Services had lost valuable jewelry that belonged to Bloom's mother. After a bench trial, the trial court concluded Bloom's claims were barred because he had failed to object to numerous accountings that did not list jewelry as an asset of the conservatorship. We affirm.

## FACTUAL BACKGROUND

### *A. Events Preceding the Filing of Perry Bloom's Petitions for Breach of Fiduciary Duty*

#### *a. Life Services's acts as conservator for Irving and Lillian Bloom*

On August 31, 2004, respondent Life Services, a private professional fiduciary, was appointed to serve as the "conservator of the persons and estates of Irving Bloom and Lillian Bloom," the parents of appellant Perry Bloom. Three weeks after the appointment, Perry Bloom (Bloom) gave Clive Lewis, an employee of Life Services, property he had found in his parents' house, which included the keys to a safe deposit box and two shoeboxes of jewelry. Lewis took photographs of the jewelry, and provided Bloom copies of the pictures. Lewis also gave Bloom a receipt listing the property that Life Services had received, which contained an entry for "assorted jewelry." During their meeting, Bloom did not make any representations to Lewis regarding the value of the jewelry.

On December 4, 2004, Lewis sent Bloom a letter stating the following: "Just for your information. We've had the coins and a few pieces of gold jewelry evaluated for market value. . . . [¶] We

plan to liquidate the lot after the court has verified value. They will probably be sold before the end of the year." An attachment to the letter listed each of the appraised items, which included numerous coins, a "Gold Necklace & Charm" (appraised at $51), a "10K Gold Ring" (appraised at $21) and a "Diamond and Garnet Ring" (appraised at $47). According to Lewis's letter, the total value of the appraised items was $4,588.88. Life Services subsequently sold the items listed in the attachment at their appraised value, and divided the proceeds between Lillian and Irving's estates.

Between November of 2004 and June of 2005, Life Services filed four partial "inventory and appraisals" that identified the assets it had received on behalf of Lillian Bloom's estate. The assets included her 50 percent share of cash, stock and real estate that she jointly owned with Irving. After Irving Bloom died in November of 2005, Life Services filed a fifth partial appraisal and inventory listing additional assets Lillian's estate had inherited. On October 5, 2007, Life Services filed a final inventory and appraisal that included a declaration stating that all of the property listed in the document, "together with all prior inventories filed contain a true statement of [all] of the estate that has come to [Life Services] knowledge or possession. . . ." The inventory and appraisals contained no reference to jewelry.

On December 6, 2005, Life Services filed the first accounting for the conservatorship, which "contained a statement of all receipts and disbursements" for the period between September 20, 2004 and September 30, 2005. The accounting included language explaining: "The assets inventoried herein . . . comprise all of the assets that have come under the control of [Life Services] as conservator to date." Schedule A to the

accounting listed all of the "cash receipts" the conservatorship had received during the accounting period. The cash receipts included the proceeds Life Services had received from the sale of various household goods, including "silver flatware" (sold for $526), "butter knives" (sold for $144) and "personal property" that had been removed from Lillian and Irving's "home and garage" (sold for $1,111). Schedule E of the accounting listed all of the conservatorship's "assets on hand," which included cash, various securities and real estate. Schedule S-1, titled "change in form of assets," showed that Life Services had sold the coins and jewelry referenced in Lewis's December 4, 2004 letter. The accounting contained no other reference to jewelry. The court approved the accounting.

Between 2006 and 2013, Life Services filed additional accountings that purported to list all of the assets that had come into possession of the conservator. None of the accountings listed any jewelry as an asset. The court approved all of the accountings without objection. Following Lillian's death in March of 2013, the court entered an order approving Life Services's "ninth and final accounting," which also contained no reference to jewelry.

*b. Life Services acts as trustee of the Lillian Bloom Trust*

In November of 2012, the court entered an order establishing the Lillian Bloom Trust. The trust named Bloom as the sole beneficiary, and Life Services as the trustee. The order authorized Life Services, acting in its capacity as conservator, to transfer all assets in the conservatorship to the trust. The assets listed in the order did not include any jewelry.

On October 31, 2013, Life Services, acting in its capacity as trustee, filed its first accounting for the trust. In January of 2014, Life Services filed a supplement to the accounting requesting that it be treated as the final accounting, and that the court authorize it to distribute all of the trust's assets to Bloom. Several weeks later, however, Life Services filed a second supplement notifying the court that a dispute had arisen with Bloom. Life Services represented that in September of 2004, Bloom had given it (in its capacity as conservator) certain jewelry that belonged to his mother. After Lillian's death in 2013, Bloom had requested that Life Services return her jewelry to him, which he then claimed to be "worth over $50,000." Life Services asserted that it was not in possession of any such jewelry.

Life Services further set out that its normal practice regarding jewelry was to allow "conservatees to use costume jewelry and jewelry of de minimis value, and to do an Inventory and Appraisal for any jewelry of value, and secure it in a safe." Life Services asserted that it had not conducted an inventory or appraisal "in 2004 or thereafter for said jewelry, nor was it placed in a safe. Therefore, Life Services is informed and believes that the jewelry was costume jewelry or jewelry of de minimus value. . . . Life Services . . . does not have any of said jewelry in its possession."

Bloom filed an objection to the final accounting of the trust "based on the 'disappearance' . . . of valuable jewelry owned by [Lillian] and which was delivered to the conservator and trustee in connection with the conservatorship." Bloom requested the matter be set for a hearing "on . . . whether the conservator should be charged with the loss of the value of the jewelry and attorneys fees." In an accompanying declaration, Bloom asserted

that when he gave Clive Lewis the jewelry in 2004, Lewis had informed him that Life Services's policy "regarding such valuable jewelry" was to hold the property unless and until it needed to generate additional funds to pay for the conservatee's care. According to Bloom, Lewis had also said that "[i]f the jewelry did not need to be sold it would be returned [to Bloom] after [his] mother's passing."

Bloom further asserted that after his mother died, he had asked Life Services about the jewelry, and was told the company would look into the issue. Bloom stated that Life Services subsequently informed him it had no record of receiving any jewelry of value, and believed the jewelry Bloom had turned over in 2004 had been "worthless and just costume jewelry."

In response to Bloom's objection, Life Service contended that the disputed jewelry was most likely costume jewelry that had been sold off with Lillian and Irving's other personal property. Life Services also argued that all assets of value had been "appraised and accounted for" in the previously filed "yearly accountings."

### *B. Bloom's Petitions for Breach of Fiduciary Duty*

#### *1. Summary of the parties' pleadings*

In October of 2014, Bloom filed two petitions pursuant to Probate Code section 16420 alleging that Life Services, acting in its capacities as both the conservator for Lillian Bloom and the trustee of the Lillian Bloom Trust, had breached its fiduciary

duties by "los[ing] or misapply[ing] the valuable jewelry," which Bloom valued at over $250,000.[1]

In its objections to the petitions, Life Services asserted that: (1) Bloom's claims were precluded by the court's prior orders approving the numerous accountings for the conservatorship, none of which listed the jewelry as an asset; and (2) the parties' evidence showed Life Services had sold all jewelry that had "any value," and distributed the assets to Irving and Lillian's estates. Life Services also argued that the evidence showed the assets of the Lillian Bloom Trust did not include any jewelry.

*2. Pre-trial submissions*

*a. The parties' joint trial statement*

Prior to trial, the parties submitted a joint statement stipulating that Bloom had "delivered . . . certain jewelry" to Life Services in September of 2004, the "nature and value" of which was in dispute. Life Services's employee, Clive Lewis, had photographed the jewelry, and provided Bloom a receipt and copies of the photographs. After Bloom contacted Life Services about the jewelry, it was unable to locate the jewelry, nor was it able to find any record of the photographs and receipt Lewis had given to Bloom.

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[1] The two petitions were assigned different trial court numbers, BP087155 and BP138542. The appeals of the judgments entered on those petitions were likewise assigned separate case numbers on appeal B270532 and B270534. On March 17, 2016, this court granted the parties' motion to consolidate the appeals for purposes of record preparation, briefing, oral argument and decision.

The parties also stipulated that during discovery, Life Services had located a document in its business records that purported to be an invoice from Earl Belt, an individual who had performed contract work for Life Services. The typed invoice requested payment for eight hours of work that Belt had allegedly performed on behalf of Lillian Bloom in April of 2008. The invoice stated that the services Belt had performed consisted of "sorting, pricing, and deliver[ing] jewelry to Goodwill." The parties acknowledged, however, that Belt had testified at his deposition that he did not recognize or prepare the invoice, and could not recall performing the listed services.

The parties further stipulated that: (1) between 2005 and 2013, Life Services had served Bloom with nine accountings regarding the conservatorship, all of which had been approved by the court without objection; and (2) the assets of the Lillian Bloom Trust consisted of all assets that had been in the conservatorship.

The joint statement asserted that the contested issues at trial included: (1) whether Bloom's claims were precluded by the prior accountings; and (2) whether Bloom was entitled to damages against Life Services as conservator or trustee, and, if so, the amount of any such damages.

*b. The parties' trial briefs*

The parties also submitted individual trial briefs. Bloom argued the evidence at trial would show the jewelry he had given to Life Services was "valuable genuine jewelry" that was worth between $180,000 and $327,000. Although Bloom acknowledged the jewelry had never been listed as an asset on any of Life Services's accountings, he argued that he was led to believe that

"non-valued personal property was not . . . listed" on those filings. Bloom argued the evidence suggested "someone, most likely an employee, [had stolen] the jewelry [from Life Services], and . . . remove[d] from the records of Life Services the photographs of the jewelry and receipt, while covering up the theft with the Earl Belt Invoice."

Bloom's trial brief also asserted that he anticipated Life Services would raise "technical defenses to the petitions, including . . . res judicata." Bloom explained that Life Services's "res judicata" argument was predicated on Probate Code section 2103, which provides that an order settling the account of a conservator, whether intermediate or final, operates as a "release[]" of "all claims . . . based upon any act or omission directly authorized, approved or confirmed in the . . . order." Under subdivision (b), however, the statute does not apply to any order obtained by "fraud . . . or by misrepresentation contained in the . . . account."

Bloom contended that although the trial court had approved several conservatorship accountings that did not contain any reference to jewelry, his claim was not precluded under section 2103 because the accountings had not "authorized, approved or confirmed" Life Services's loss of the jewelry, and because Life Services never "disclosed that it lost or allowed the jewelry to be stolen." Bloom argued this qualified as a material misrepresentation rendering subdivision (a) inapplicable.

Life Services's trial brief asserted that the evidence would show Bloom's claims were precluded by the prior court orders approving its accountings. Life Services noted that none of the accountings had "referred to or listed any jewelry other than" the jewelry that had been sold with Lillian and Irving's coin

collection in December of 2004. Life Services further contended that even if Bloom's claim was not procedurally barred, his claim failed on the merits because he could not prove the jewelry had any value. According to Life Services, although Bloom's damages expert had based his opinion of value on the assumption that the jewelry was in fact genuine, Bloom had provided no evidence verifying the jewelry's authenticity.

*2. Witness testimony*

Four witnesses testified at the bench trial: Bloom, Margaret Bohlan (the director of Life Services), Charles Carmona (Bloom's damages expert) and Theresa Bronner (Life Services's damages expert).

Bloom testified that shortly after Life Services became conservator in 2004, he had given Clive Lewis two shoeboxes of jewelry he had found in his mother's closet. Bloom clarified there was a "large quantity" of additional jewelry in his parents' house that he had not delivered to Life Services, which he described as "inexpensive or every day jewelry." Bloom characterized the jewelry he had given to Lewis as the family's "good jewelry." Bloom asserted that Lewis had told him Life Services's "policy was to hold items like this, not to liquidate them, to hold them against the future eventuality that they would need to be sold to pay for the care of [the conservatees]." Bloom admitted he never told Lewis the jewelry was authentic, or that it had any value.

Bloom explained that he had determined the jewelry in the shoeboxes was the family's "good jewelry" based on conversations he had with his father. According to Bloom, his mother normally stored her "good jewelry" in a safe deposit box. After finding the two shoeboxes of jewelry in his mother's closet, Bloom asked his

father about the items. Irving told Bloom Lillian had directed him to remove those pieces of jewelry from the safe deposit box, and place them in the closet. Bloom said he recognized several of the pieces of jewelry, including his mother's charm bracelet and a ring she had inherited from her father.

With respect to the value of the jewelry, Bloom testified that he had been present when his father bought one of the charms, which he believed to have been purchased for approximately $500. Bloom admitted he did not have personal knowledge regarding the value of any of the other jewelry. His understanding regarding the value of this jewelry was based on information his parents and others had given to him.

Bloom also admitted he had received and reviewed all of the accountings and other items Life Sciences had filed in the conservatorship proceedings. He testified, however, that he had not been concerned when he saw the jewelry was not listed on the accountings because several other personal items were also omitted from the accountings, including "the china, crystal, silver and two furs." Bloom acknowledged, however, that the first accounting included entries showing Life Services had sold his parents' "silver" and personal property that had been found in the "the house and garage."

Bloom testified to his belief, based on Lewis's comments, that Life Services intended to hold his parents' personal items separately from the assets listed in the accountings, and not to sell those items unless it needed additional funds to pay for their care. He further believed that all of the personal items, including the $250,000 in jewelry, would be returned to him at the time the conservatorship terminated.

Bloom also explained that he understood the letter Lewis had sent to him in December of 2004, which listed several coins and pieces of jewelry that Life Services had appraised and later sold, referred to property that had been recovered from a "safe deposit box." Bloom did not believe any of the jewelry referenced in the letter was from the collection of jewelry he had given to Lewis. Bloom could not explain why his parents had decided to keep some jewelry and coins in a safe deposit box, while placing the more valuable "good jewelry" in Lillian's closet.

Finally, Bloom testified that he had not given Life Services any jewelry in its capacity as the trustee of the Lillian Bloom Trust, and did not have any knowledge as to whether the trust ever received the jewelry from the conservatorship.

Margaret Bohlman, the executive director of Life Services, testified that she was not aware of any current employee who had knowledge about the jewelry at issue, or its value. She further testified that Life Services served as the trustee of the Lillian Bloom Trust, and that the trust's assets consisted of property that had been transferred from the conservatorship. Bohlman also stated that Life Services "did not receive any jewelry from the conservatorship at the time that assets were turned over to the trust."

Bloom's damages expert, Charles Carmona, testified that he was a gemologist and appraiser of jewelry. He admitted that his opinion regarding the value of the jewelry, which he estimated to be worth between $180,000 and $320,000, was based solely on photographs and information that Bloom had provided to him. Carmona stated that when appraising each item, he had tried to "coax[] a description out of . . . Bloom," explaining: "I would point to it and say, what do you remember about that and

was it white gold, was it yellow gold, might it have been platinum or silver, . . . were there diamonds around it. And then I would just fix in mind similar items that I've seen and put a range of between 100 to 150 percent difference in the range." Carmona emphasized that he had not physically "examined any of the items," and admitted the jewelry could have "little or no value."

Theresa Brossmer, Life Services's damages expert, testified that the value of the jewelry could not be determined by looking at the photographs Bloom had provided.

*3. The court's statement of decision*

The court found that Bloom's claims were precluded under Probate Code section 2103. In its statement of decision, the court concluded that Bloom had admitted receiving numerous documents from Life Services, including: (1) a letter stating that Life Services had appraised, and intended to sell, several pieces of jewelry, including a "garnet and diamond ring," a "10K gold ring"" and a "gold necklace and charm"; (2) the first accounting, which referred to the sale of multiple categories of personal property, but contained no reference to the jewelry; and (3) eight additional accountings regarding the conservatorship, none of which listed jewelry as an asset of the estate.

The court also found that the evidence showed Bloom had made no inquiry why the "good jewelry" was not listed in any of the accountings. According to the court, a "reasonable interpretation of these documents is that the 'good jewelry' was not as valuable as [Bloom] believed and was sold with the conservatees' other personal property and the residence. If [Bloom] believed otherwise, he waited too long to make that claim."

The court further determined that Bloom had failed to establish any of the orders approving the accountings were obtained through fraud or misrepresentation within the meaning of section 2103, subdivision (b). According to the court, subdivision (b) applied only in instances of "extrinsic fraud," rather than intrinsic fraud. "Here, the letter from [Life Services], and more significantly its accounting, gave [Bloom] sufficient information for him to investigate the status of the 'good' jewelry, but he did nothing. He admits that he never even called . . . to ask about the jewelry . . . until 2013, eight years after the first account was filed, served and approved by the court without objection. If any fraud was practiced here, it was intrinsic, not extrinsic, and therefore does not prevent the preclusive effect of section 2103."

The court also found Bloom had "failed to carry his burden of proof that the jewelry he turned over to [Life Services] at the commencement of the conservatorship was worth in excess of $250,000." The court noted that with the exception of one charm Bloom had allegedly seen his father purchase for $500, his "understanding of the value of the jewelry was largely conjecture based upon hearsay statements he had heard over the years." The court further noted that the testimony of Bloom's expert was "of little value" because his "opinions were based entirely on [Bloom's] description and the photos. . . . [Bloom] believed the jewelry to be genuine, but he had no personal knowledge or other proof of this."

In regards to the Earl Belt invoice Life Services had found it its business records, the court concluded that while the document was "mysterious," it did not provide any "reliable evidence of the value of the alleged missing jewelry or how it

came to be missing, if it did. Nor does it get Petitioner past the res judicata effect of [Life Services's] accountings and discharge."

## DISCUSSION

### A. *Standard of Review*

"In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

"Ordinarily, when the court's statement of decision is ambiguous or omits material factual findings, a reviewing court is required to infer any factual findings necessary to support the judgment. . . . [¶] . . . . In order to avoid the application of this doctrine of implied findings, . . . 'a party claiming omissions or ambiguities in the factual findings must bring the omissions or ambiguities to the trial court's attention' pursuant to [Code of Civil Procedure] section 634." (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 494 (*Ermoian*).) "The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision." (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462 (*SFFP*).)

### *B. Probate Code Section 2103 Precludes Bloom's Claim Against Life Services in Its Capacity as Conservator*

The trial court concluded that Bloom's claim against Life Services in its capacity as conservator was barred by res judicata under Probate Code section 2103.[2] The statute states in relevant part:

> (a) When a judgment or order made pursuant to this division becomes final, it releases the . . . conservator . . . from all claims of the . . . conservatee and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, "order" includes an order settling an account of the . . . conservator, whether an intermediate or final account.
>
> (b) This section does not apply where the judgment or order is obtained by fraud or . . . by misrepresentation contained in the petition or account . . . as to any material fact. For the purposes of this subdivision,

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[2] Bloom argues Life Services waived any argument under Probate Code section 2103 because its objections to the petition do not specifically reference the defense of "res judicata." Although Life Services did not use the term "res judicata" in its objections, it did assert that Bloom's claim was barred because he had failed to object to the accountings. Moreover, Bloom's pre-trial brief acknowledged that Life Services intended to raise the defense of "res judicata" under section 2103, and provided arguments as to why he did not believe the statute applied. Whether section 2103 precluded Bloom's claim was one of the primary issues contested at trial. Both before and during trial, the parties and the court understood Life Services was asserting section 2103 as a defense.

misrepresentation includes, but is not limited to, the omission of a material fact.

Bloom does not dispute that: (1) between 2005 and 2013, Life Services filed annual accountings regarding the conservatorship; (2) none of the accountings listed jewelry as an asset of the estate; (3) the court approved all of the accountings without objection, including the ninth and final accounting, approved May 6, 2013.

Bloom argues, however, that his claim for breach of fiduciary duty is not barred under section 2103 because the claim is not based on any act or omission that was authorized or confirmed in the orders approving the accountings, and because section 2103, subdivision (b), precludes any res judicata effect of the orders.

*1. Bloom's claim is based on acts or omissions that were confirmed by the trial court's orders*

Bloom argues that section 2103, subdivision (a)'s res judicata provisions are inapplicable because his claim is based on the manner in which Life Services disposed of the jewelry, an act that was neither approved nor confirmed in the trial court's orders settling the accountings. (See generally *Bank of America v. Superior Court* (1986) 181 Cal.App.3d 705, 713 (*Bank of America*) ["Under subdivision (a) of section 2103, an order settling a[n] . . . accounting releases the [conservator] from claims based upon any act or omission directly approved or confirmed in the order"].) Bloom appears to contend that because the accountings contain no information regarding the jewelry, the orders confirming those accountings cannot be deemed conclusive as to whether Life Services acted negligently with respect to its

handling of such property. (See *Conservatorship of Coffey* (1986) 186 Cal.App.3d 1431, 1437-1438 (*Coffey*). ["an order settling the account . . . is conclusive as to all matters passed upon but is not binding as to those matters not passed upon"].)

However, the annual accountings contain language stating that the property listed therein includes "all of the assets that have come under the control of . . . [the conservator]." Each accounting likewise states that it constitutes a "full, true and correct statement of all receipts and disbursements," and contains attachments listing all the assets of the conservatorship. The trial court orders, in turn, make clear that it "approved said account[s]." The court's orders therefore approved Life Services's representation that the property listed in the accountings was an accurate and full description of all the assets that had come into the conservator's possession.

Bloom's breach of fiduciary duty claim directly challenges that conclusion, asserting that the assets of the conservatorship include property that was not listed on the accountings, namely, jewelry valued at $250,000. Under section 2103, unless an exception set forth in subdivision (b) applies, that claim is precluded by the court's orders approving accountings that show the conservator did not possess such an asset.

*2. Substantial evidence supports the court's finding that Bloom failed to establish any exception under section 2103, subdivision (b)*

Bloom argues that even if subdivision (a) applies to his claim, the court's orders approving the accountings do not have res judicata effect because they were obtained by either fraud or misrepresentation within the meaning of subdivision (b). (See *Bank of America, supra,* 181 Cal.App.3d at pp. 713-714

[subdivision (b) provides that orders shall "not be given res judicata effect in two types of situations[:] . . . . (1) 'where the . . . order . . . is obtained by fraud or conspiracy,' and (2) where the . . . order . . . is obtained 'by misrepresentation . . . as to any material fact'"].)

*a. Substantial evidence supports the court's finding that Bloom did not establish any extrinsic fraud*

Bloom contends the court's orders do not have preclusive effect because Life Services obtained them through "fraud." As used in subdivision (b), the term "fraud" has been interpreted to mean "extrinsic fraud – i.e., fraud in obtaining the order itself. [Citation.] Extrinsic fraud occurs when ""the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practi[c]ed on him by his opponent."" (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 426 (*Knox*); *Bank of America, supra,* 181 Cal.App.3d at p. 714].) "The clearest examples of extrinsic fraud are cases in which the aggrieved party is kept in ignorance of the proceeding or is in some other way induced not to appear. [Citations.] In both situations the party is 'fraudulently prevented from presenting his claim or defense.' [Citations.]" (*Estate of Sanders* (1985) 40 Cal.3d 607, 614-615.)

Bloom does not dispute he received adequate notice of the legal proceedings related to Life Services's accountings. He contends, however, that the evidence at trial established Clive Lewis made statements to him that amounted to extrinsic fraud. In support, Bloom cites testimony in which he asserted that Lewis told him Life Services's policy was to hold valuable personal property unless and until it needed additional funds to pay for the conservatee's care. Bloom also testified that Lewis's

statement caused him to believe the jewelry would be kept "separate from the financial assets being reported to court [in the accountings]." Bloom asserts his testimony established that Lewis "lulled [him] into thinking" the "good jewelry was safe," and would not be reported in the accountings.

The court's statement of decision does not address whether Lewis's comments qualified as a form of extrinsic fraud. Because Bloom never asked the trial court to clarify this factual issue, the doctrine of implied findings compels us to presume the court concluded Lewis's statement did not amount to extrinsic fraud. (See *SFPP, supra,* 121 Cal.App.4th at p. 462 [under doctrine of implied findings, the "appellate court [must] presume that the trial court made all factual findings necessary to support the judgment . . . unless the omissions and ambiguities in the statement of decision are brought to the attention of the superior court in a timely manner"]; *see also Ermoian*, *supra*, 152 Cal.App.4th at p. 494.)

This implied finding is supported by substantial evidence. *SFPP, supra,* 121 Cal.App.4th at p. 462 [implied findings reviewed under substantial evidence standard].) According to Bloom's testimony, Lewis only told him that Life Services would hold valuable personal property like the jewelry unless and until it needed additional funds to pay for the conservatee's care. There is no evidence Lewis ever said (or otherwise implied) that Life Services would exclude unliquidated property from the assets listed on the accounting. The trial court could reasonably conclude that, standing alone, Lewis's statements that Life Services would hold the jewelry did not qualify as a form of "fraud or deception" (*Knox, supra,* 205 Cal.App.4th at p. 426) that

caused Bloom not to object to the accountings based on their failure to list the jewelry as an asset of the estate.

*b. Bloom has not identified any material misrepresentation or omission*

Bloom also argues the court's orders approving the accountings do not have preclusive effect because Life Services obtained them through material misrepresentations or omissions: failing to disclose that it had come into possession of the jewelry, and then lost it.

Subdivision (b)'s exception for orders obtained through misrepresentations or omissions "codifies] [a] second specie of extrinsic fraud" (*Bank of America, supra,* 181 Cal.App.3d at p. 714) that "[occurs] where fiduciaries have concealed information they have a duty to disclose. [Citations.] This variety of extrinsic fraud recognizes that, even if a potential objector is not kept away from the courthouse, the objector cannot be expected to object to matters not known because of concealment of information by a fiduciary." (*Knox, supra,* 205 Cal.App.4th at p. 427.) Our courts have clarified that a party relying on this exception must do more than "'simply assert that the judgment was premised upon false facts. The party must show that such facts could not reasonably have been discovered prior to the entry of judgment." [Citation.]' [Citation.]" (*Id.* p. 428.) Thus, where a previous accounting "provid[ed] [the plaintiff] sufficient information to investigate a fraud claim at the time[,]. . . the fraud, if any, was intrinsic rather than extrinsic [citation] and does not provide an exception under Probate Code section 2103, subdivision (b)." (*Ibid.*)

In this case, Bloom contends Life Services made "material omissions" within the meaning of subdivision (b) because the accountings did not disclose it had obtained and lost Lillian's jewelry. The trial court rejected this argument, explaining that the absence of any reference to the jewelry on the accountings "gave [Bloom] sufficient information for him to investigate the status of the 'good' jewelry, but he did nothing. He admits that he never even called . . . to ask about the jewelry . . . until 2013, eight years after the first account was filed, served and approved by the court without objection."

We find no error in the court's reasoning or its conclusions. Bloom's claim contends the conservator lost jewelry that was worth approximately $250,000. The value of the assets listed in Life Services's accountings, in comparison, was approximately $450,000, meaning that the jewelry would have increased the total value of the estate by more than 50 percent. The evidence shows that although all five inventories and appraisals and all nine of the accountings Life Services filed between 2004 and 2013 contained language stating that they listed all of the assets that had come into the conservator's possession, none of those documents listed the jewelry as an asset. The trial court could reasonably conclude that the absence of any reference to such a

substantial asset, which Bloom claims to have personally delivered to Life Services at the outset of the conservatorship, should have caused him to investigate his claim far earlier in the proceedings.[3]

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[3] Bloom contends this case cannot be meaningfully distinguished from *Coffey*, *supra*, 186 Cal.App.3d 1431. The plaintiff in *Coffey* filed a petition alleging his father's former conservator had caused a life insurance policy to lapse by failing to pay the premiums. The defendant argued that the claims were precluded under section 2103 based on prior orders settling the account, and discharging him as conservator. The plaintiff, however, contended that the accounting had failed to disclose the existence of the insurance policy, or that it had lapsed. The court held that these omissions qualified as misrepresentations within the meaning of subdivision (b). (*Id.* at pp. 1437-1438.) In its analysis, the court noted that: (1) a conservator is statutorily required to obtain judicial authorization prior to terminating a conservatee's life insurance policy; and (2) Probate Code section 2625 provides that when a conservator is required to obtain judicial authorization for a transaction, but fails to do so, the transaction is subject to review upon the next succeeding accounting. (*Id.* at p. 1438.) The court explained that these statutes had required the conservator to bring the policy's termination to the court's attention, which he had failed to do. The court concluded that applying section 2103's res judicata provisions under such circumstances would "excuse[] the performance of statutory duties required in the management and control of the conservatee's estate." (*Ibid.*)

The holding in *Coffey* was based in large part on statutory requirements that are imposed on a conservator with respect to life insurance policies. No such statutory obligations are at issue here. Moreover, the accounting in *Coffey* contained no information that should have reasonably alerted the plaintiff that the conservator had allowed the policy to lapse, but instead

### *C. The Trial Did Not Err in Dismissing Bloom's Claim Against Life Services in its Capacity as Trustee*

Bloom also argues that the trial court erred in concluding he had failed to establish Life Services breached its fiduciary duties while acting in its capacity as the trustee of the Lillian Bloom Trust. As with Bloom's claim against Life Services in its capacity as conservator, this claim was predicated on Life Services's alleged loss of the jewelry. At trial, Margaret Bohlman, the executive director of Life Services, testified that the trust's assets were comprised solely of the assets that had been transferred to it from the conservatorship, and that those assets did not include any jewelry.

Bloom does not appear to challenge Bohlman's assertions that the trust never actually possessed any jewelry. He argues, however, that as the successor trustee, Life Services remained "liable for the breach of trust" it had committed in its capacity as the "predecessor" conservator. As explained above, however, we affirm the trial court's finding that Life Services is not liable to Bloom in its capacity as conservator. Accordingly, we affirm the court's finding that it likewise has no derivative liability in its capacity as trustee.[4]

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simply omitted any reference to the policy. Here, however, Bloom claims he personally handed over the jewelry to Life Services, and then received and reviewed numerous accountings that purported to list all of the estate's assets, but did not list the jewelry.

[4] In his opening appellate brief, Bloom also asserts the trial court "disregarded" a post-trial request that the statement of decision be amended to address two additional issues: (1) whether Life Services had complied with California Rules of Court, rule 7.1059, subdivision (17), which requires a conservator

## DISPOSITION

The judgment is affirmed. The respondent shall recover its costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J. MENETREZ, J.*

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to notify family members before disposing of a conservatee's "tangible personal property"; and (2) whether Life Services should have "the burden of proving the value (or non-value) of the jewelry." Bloom's brief contains no legal analysis explaining why the court was required to address these two issues, which he raised for the first time after the trial had been completed. In any event, given our conclusion that Bloom's breach of fiduciary duty claim is barred by res judicata, any possible error the trial court committed by failing to address these issues was harmless. (See, e.g., *In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1062 [any error regarding the court's failure to address "objections and proposed corrections" to a statement of decision was "harmless" where the unaddressed issues had no effect on disposition of the appeal].)

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