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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Estate of JAMES HENRY
PARKHILL, JR., Deceased.

2d Civil No. B284713
(Super. Ct. No. 56-2016-
00482640-PR-LA-OXN)
(Ventura County)

BARNEY PARKHILL,

Petitioner and Respondent,

v.

RITA BROWN,

Objector and Appellant.

Rita Brown appeals a June 29, 2017 probate order directing Brown to transfer guns, a gun safe, two vehicles, and family heirlooms to Barney Parkhill, Administrator of the Estate

of James Henry Parkhill, Jr. (Prob. Code, §§ 850, subd. (a)(2)(C), 856.)¹ We affirm.

Facts

In 2015, James Parkhill Jr. (James) and Barney Parkhill (Parkhill), James' brother and business partner, sold their machine shop where James stored guns, jewelry, and family heirlooms in a gun safe. James moved the gun safe and its contents to Brown's Simi Valley residence seven months before his death on May 9, 2016. After James passed away, Parkhill was appointed administrator of James' estate and asked Brown to return the property. Brown "blew up" and said that Parkhill was greedy.

On December 15, 2016, Parkhill filed a petition to establish estate ownership and to order Brown to transfer the property to the estate. (§§ 850, subd. (a)(2)(C), 856.)² Attachment A to the petition described the property as follows: a gun safe, rifles and handguns, gun clips and holsters, jewelry, a pair of WWII German binoculars, and two Dodge Durango

¹ All statutory references are to the Probate Code unless otherwise stated.

² Sections 850 to 859 governs conveyances or transfers of property claimed to belong to a decedent or other person. (*Estate of Kraus* (2010) 184 Cal.App.4th 103, 110.) The statutory scheme authorizes the administrator of a decedent's estate to petition the probate court, to order the transfer of property to the estate "[w]here the decedent died . . . holding title to" property, and where "the property, or some interest, is claimed to belong to another." (§ 850, subd. (a)(2)(C).)

vehicles. The petition alleged that the property was worth more than \$50,000.

Brown filed objections to the petition and declared that she and James lived together from 1998 to 2016. Brown stated that James stored the property at Brown's house after he sold the business, and "I do not have these items." Brown repeatedly told Parkhill that she did not have the property.

At the hearing on the petition, Brown stated that James gifted the safe, guns, and vehicles to her son and daughter, who were not related to James. Brown claimed that James bolted the gun safe to her garage wall and that it was a fixture. The trial court asked: "Are you suggesting that the gun safe was gifted by virtue of this bolting?" Brown's trial attorney replied: "At the point it's bolted, it becomes a fixture." Brown claimed that James gifted the gun safe to her son, Ryan, who lives in Texas, "to go with the guns to keep them safe." Brown submitted a gun appraisal that was prepared on May 24, 2017, a month before the hearing. Brown also claimed that James gifted the two vehicles to Brown's daughter, Stephanie, who lived with Brown. Brown said she had the signed pink slip to the 2009 Dodge Durango but failed to produce it.

The trial court discredited Brown's testimony because it contradicted Brown's verified response to the petition. "[A]ll I've heard today is [that] all of these guns were given to [Brown's] son The safe was given to my son. The cars were given to my daughter. Well, it would have been a simple thing in this verified response to say that, but none of that appears at all in this response. [¶] What the response says is entirely different. . . . [N]owhere does it say these things were given to my children, which is the defense now [¶] . . . [T]here is no

explanation for it. [The response] was filed February 8th and now it's June 29th, and all of a sudden it's no longer 'I don't have this stuff.' Now the response is, 'My kids have all of this stuff.' So I can't find [Brown] to be credible in this case."

Substantial Evidence

Brown claims that the trial court abused its discretion in not crediting her testimony. On review, we do not reweigh the evidence or redetermine witness credibility. (*In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal.App.4th 28, 34.) The trial court sits as the trier of fact and determines whether a witness is to be believed or not believed. (*Estate of Teel* (1944) 25 Cal.2d 520, 526.) On appeal, the order is presumed correct and all intendments and presumptions are indulged to support it on matters as to which the record is silent. (*In re Marriage of Martin* (1991) 229 Cal.App.3d 1196, 1200.)

At trial, Brown admitted that James moved the safe, guns, and vehicles to her residence and that the property is still there. Brown's verified response to the petition said just the opposite: that none of the property was at her house. At the conclusion of the trial, Brown's trial attorney admitted that his client had four guns stored in the safe at her house and that seven other guns were unaccounted for. The focus of the hearing was Parkhill's right to possession of the property with respect to Brown. Brown did not claim that she owned any of the property or that, as against Parkhill, she had the right to possess it.

In the words of the trial court, "the most relevant thing the Court has is [Brown's] verified, under oath response to the petition." The trial court discredited Brown's testimony that James gifted the safe and guns to her son, Ryan, who lived in Texas and did not attend the hearing. With respect to vehicles,

Brown’s daughter, Stephanie, did not testify or submit evidence that James transferred title to the vehicles. (See Evid. Code, § 662 [clear and convincing proof required to overcome presumption of ownership based on title].) Brown said that she had a signed pink slip to the 2009 Dodge Durango but failed to produce it. With respect to the binoculars and jewelry, Parkhill saw the items in the safe before the safe and its contents were moved to Brown’s house.

Based on Brown’s contradictory testimony and her verified response to the petition, it took no leap of logic for the trial court to draw the inference that the property was never gifted to Brown’s children and was estate property. (Prob. Code, § 856.) Brown argues that the trial court exceeded its jurisdiction but “[s]ection 850 et seq. provides a mechanism for court determination of rights in property claimed to belong to a decedent or another person.’ [Citation.] The statutory scheme’s ‘evident purpose’ is to carry out the decedent’s intent and to prevent looting of estates. [Citation.]” (*In re Estate of Kraus*, *supra*, 184 Cal.App.4th at p. 111.)

Post Judgment Orders

Brown contends that the trial court erred in making postjudgment orders directing Brown to deposit \$50,000 into a blocked account pending the appeal. (Code Civ. Proc., § 917.9, subd. (a)(1); *Estate of Murphy* (1971) 16 Cal.App.3d 564, 567.) Those orders were made on October 5, 2017 and December 6, 2017, more than a month after Brown filed the notice of appeal. Although the order fixing the amount of the undertaking is appealable (see Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2017) [¶] 7:177, p. 7-58; *Vangel v. Vangel* (1953) 116 Cal.App.2d 615, 632), the record on

appeal does not include a record of the proceedings. “Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs. [Citations.]” (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102.)

Disposition

The June 29, 2017 order directing Brown to return the property described in Attachment A of the probate petition is affirmed. (Prob. Code, §§ 850, subd. (a)(2)(C), 856.) Parkhill is awarded costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Glen M. Reiser, Judge

Superior Court County of Ventura

Anthony J. Rista, for Objector and Appellant.

Pollock Law Firm and Adam W. Pollack; Law Offices
of Terence M. Sternberg and Terence M. Sternberg, for Petitioner
and Respondent.