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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Estate of EDWINA LOU FUCHS,  
Deceased.

2d Civil No. B277415  
(Super. Ct. No. 56-2009-00358450-  
PR-LA-OXN)  
(Ventura County)

MARY LOU WILSON,  
  
Petitioner and Appellant,

v.

MERRY STEPHANIE WOODFIN,  
  
Objector and Respondent.

Mary Lou Wilson appeals from a judgment entered in favor of respondent Merry Stephanie Woodfin, the executor of the estate of Edwina Lou Fuchs. With one minor exception, the judgment upheld the accuracy of respondent's inventory of the estate. Appellant also appeals from a postjudgment order requiring her to pay respondent's reasonable attorney fees and costs. We affirm.

### *Procedural and Factual Background*

Fuchs died in August 2009. She was survived by four children, including appellant and respondent. In April 2011 the four children agreed that respondent would be appointed executor of Fuchs's estate.

In August 2013 respondent filed her first and final accounting and petitioned for distribution of the estate's assets. Appellant filed objections to the accounting and petitioned for the removal of respondent as executor.

The probate court suspended respondent's powers as executor and appointed David Shea as "Interim Successor Administrator." In November 2014 Shea filed his report and recommendations. Appellant objected. She claimed that respondent had failed to render a complete inventory of the decedent's assets. The matter was set for a court trial.

Appellant "issued 34 separate 'consumer' subpoenas for the production of business records." Respondent moved to quash the subpoenas. The probate court granted the motion because "[t]he subpoenas are overbroad and in many instances have no justifiable nexus to the issues set for trial." Appellant and her counsel were ordered to pay sanctions of \$4,500.

The matter was transferred from the Probate Division to the Civil Division "for the limited purpose of [conducting a court trial on] whether certain assets allegedly owned by the decedent . . . at the time of her death were omitted from the inventory and proposed distribution of her estate." In October 2015 the trial commenced before Hon. Rocky J. Baio.

At the conclusion of the trial, Judge Baio issued a statement of decision. He found that the only item omitted from the inventory was a 1966 Datsun. He ordered the case "returned

to the probate [division] for further disposition.” Judgment as to the trial was entered on May 27, 2016.

Pursuant to Probate Code section 11003, respondent petitioned for an award of reasonable attorney fees and costs incurred in defending against appellant’s contest of the accounting.<sup>1</sup> She requested that the fees and costs “be assessed against any proceeds awarded to [appellant] as her share of the estate.” Section 11003, subdivision (a) authorizes such an assessment if “the court determines that the contest [of the accounting] was without reasonable cause and in bad faith.”<sup>2</sup> (*Ibid.*)

At the hearing in the probate court on respondent’s petition, appellant requested that “the issue of bad faith and lack of reasonable cause” be decided not by the probate court but by Judge Baio “because he heard the evidence.” The probate court denied the request. It concluded “that the quixotic attempt by [appellant] to [f]ind alleged un-inventoried items was without reasonable cause and not in good faith, as evidenced by Judge Baio’s order.”

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<sup>1</sup> Unless otherwise stated, all statutory references are to the Probate Code.

<sup>2</sup> Section 11003, subdivision (a) provides: “If the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the compensation and costs of the personal representative and other expenses and costs of litigation, including attorney’s fees, incurred to defend the account. The amount awarded is a charge against any interest of the contestant in the estate and the contestant is personally liable for any amount that remains unsatisfied.”

The probate court noted that there was only about \$200,000 left in the estate, which was to be divided equally among the decedent's four children. Appellant's distributive share was \$50,000. But the unpaid fees and costs were approximately \$150,000. The court orally ordered that appellant's "distributive share . . . be allocated entirely to fees and costs and that the balance [of the fees and costs], which is perhaps \$100,000 or more, . . . be borne by the other three [children] so at least there's some estate to distribute." The court's oral order was committed to writing and entered on July 27, 2016.

Appellant filed a single notice of appeal from both the judgment entered on May 27, 2016, and the postjudgment order entered on July 27, 2016.<sup>3</sup>

*Orders Quashing Subpoenas and Imposing Sanctions*

In her opening brief appellant asserts: "[T]he requested subpoenas . . . were directly relevant to find joint accounts or other accounts of the decedent at the time of death. Thereon [*sic*], the order quashing the subpoenas was in error." "As the order quashing the subpoenas was in error, so was the attendant order for sanctions against Appellant and her counsel." These conclusory allegations, without supporting argument or citation to authority and facts in the record, are insufficient to show that the probate court erred.<sup>4</sup> "A judgment or order of the

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<sup>3</sup> The notice of appeal is not included in the record. We judicially notice it pursuant to Evidence Code sections 452, subdivision (d), and 459.

<sup>4</sup> "The additional argument on this point in [appellant's] reply brief comes too late. [Citation.]" (*Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80, fn. 7; see also *Aviel v. Ng* (2008)

lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . .” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) “When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary. [Citations.]” (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) “Hence, conclusory claims of error will fail.” (*In re S.C., supra*, 138 Cal.App.4th at p. 408.) “An appellate court is not required to examine undeveloped claims, nor to make arguments for parties. [Citation.]” (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.)

*Alleged Denial of a Fair Trial*

Appellant contends that she was denied a fair trial before Judge Baio because the probate court’s order “quashing the subpoenas was a de facto motion in limine to exclude relevant evidence.” Appellant reasons: “Exclusion of relevant evidence on issues directly relevant is a denial of due process.” Appellant maintains that “the requested subpoenas . . . were directly relevant to find joint accounts or other accounts of the decedent at the time of her death.”

An error resulting in the exclusion of evidence is not reversible unless the appellant made an offer of proof in the lower

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161 Cal.App.4th 809, 821.) In any event, the additional argument is also conclusory.

court. (Evid. Code, § 354, subd. (a).) “An offer of proof should give the trial court an opportunity to change or clarify its ruling and in the event of appeal would provide the reviewing court with the means of determining error and assessing prejudice.

[Citation.] To accomplish these purposes an offer of proof must be specific. It must set forth the actual evidence to be produced and not merely the facts or issues to be addressed and argued.

[Citations.]” (*People v. Schmies* (1996) 44 Cal.App.4th 38, 53.)

Appellant has not referred us to any portion of the record where she made an offer of proof. If “a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citation.]’

[Citations.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

Moreover, “[t]he absence of cogent legal argument [on the fair trial contention] . . . allows this court to treat the contention[] as waived. [Citations.]” (*In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 830.) Finally, the contention is forfeited because appellant failed to raise it in the lower court. (*In re Marriage of Minkin* (2017) 11 Cal.App.5th 939, 958-959.)

*Probate Court’s Denial of Appellant’s Request that  
Judge Baio Decide the Section 11003 Issue*

Section 11003, subdivision (a) provides that an award of attorney fees requires a determination “that the contest [of the accounting] was without reasonable cause and in bad faith.”

Appellant claims: “It was error for the [probate] judge to exercise discretion over the award of fees.” “The [probate] Judge could not have the evidence before it to make a satisfactory determination, he did not hear the evidence, or consider or hear all of the testimony of the witnesses that testified [at the hearing before Judge Baio].” Appellant notes that Judge Baio “made no finding

whatsoever that the actions were brought in bad faith or without reasonable cause.”

In support of her claim, appellant cites *Gamble v. Los Angeles Dept. of Water & Power* (2002) 97 Cal.App.4th 253 (*Gamble*). There, the court construed Code of Civil Procedure section 1038, which applies to “any civil proceeding under the Government Claims Act . . . or for express or implied indemnity or for contribution in any civil action.” (*Id.*, subd. (a).) The statute provides that, upon the dismissal of the proceeding, the court shall award the defendant “the amount of all reasonable and necessary defense costs,” including attorney fees, if the court “determine[s] that the proceeding was not brought in good faith and with reasonable cause.” (*Ibid.*) The statute “shall only apply if the defendant . . . has made a motion for summary judgment, judgment under [Code of Civil Procedure] Section 631.8, directed verdict, or nonsuit and the motion is granted.” (*Id.*, subd. (d).)

*Gamble* held “that (unless the judge is unavailable) the motion for costs must be heard by the same judge who heard the dispositive motion [i.e., the motion for summary judgment, judgment under Code of Civil Procedure section 631.8, directed verdict, or nonsuit].” (*Gamble, supra*, 97 Cal.App.4th at p. 259.) *Gamble* noted that a letter to the Governor had stated, “*The court that hears the case* should be able to easily determine whether the action was brought with reasonable cause and in a good faith belief there was a justiciable controversy under the facts and law which warranted the filing of the complaint . . . .’ [Citation.]” (*Id.*, at p. 258.)

*Gamble* is distinguishable. Its holding is based on the particular language of Code of Civil Procedure section 1038 and the letter to the Governor. Appellant does not explain why

the *Gamble* holding should apply to the construction of Probate Code section 11003.

The probate court had discretion whether to decide the section 11003 issue or transfer the matter to Judge Baio for decision. In denying appellant's request to transfer the matter to Judge Baio, the probate court explained, "[S]ince I'm managing the totality of the litigation as opposed to that one evidentiary hearing [before Judge Baio], that this court is better suited to [determine the reasonable cause/bad faith issue], so I'm going to stick with that in this case."

The probate court did not abuse its discretion. Except for the evidentiary hearing before Judge Baio, it had handled the matter from the beginning in September 2013 when appellant filed objections to respondent's accounting. Judge Baio's detailed statement of decision informed the probate court of his assessment of the evidence. The probate court had appointed David Shea as interim successor administrator. It had considered Shea's 58-page report and recommendations. It had read what it described as appellant's "571 pages of disorganized and unindexed photographs, documents of all sorts and various interspersed attempts at argument . . . attached to a document cover page labeled 'objection'." It had granted respondent's motion to quash appellant's subpoenas. Accordingly, there was no error in the probate court's denial of appellant's request to transfer the matter to Judge Baio for decision on the section 11003 issue. The probate court reasonably concluded that it was in a better position than Judge Baio to rule on the issue.

*Last Section of Appellant's Opening Brief*

The last section of appellant's opening brief has the following heading: "**The Award of Fees Under Probate Code**



**Section 11003 was Error.**” The contention is forfeited because it is not supported by meaningful legal analysis with citations to facts in the record. (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.)

*Appellate Attorney Fees*

Pursuant to section 11003, respondent requests that she be awarded her reasonable attorney fees on appeal.

“Attorney fees on appeal are ordinarily recoverable only if authorized by statute. [Citation.] Statutory authorization for the recovery of attorney fees incurred in trial court proceedings *necessarily* includes attorney fees incurred on appeal unless the statute specifically provides otherwise. [Citation.]” (*Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 557.)

Section 11003 does not “specifically provide otherwise.” (*Ibid.*) It therefore authorizes an award of appellate attorney fees. Since we uphold the probate court’s finding that appellant’s contest of respondent’s accounting “was without reasonable cause and not in good faith,” we grant respondent’s request for reasonable attorney fees on appeal.

*Disposition*

The judgment and postjudgment order awarding reasonable attorney fees and costs are affirmed. Respondent shall recover her reasonable attorney fees and costs on appeal. The matter is remanded to the probate court with directions to conduct a noticed hearing to determine the amount of reasonable attorney fees and costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Rocky J. Baio and Glen M. Reiser, Judges

Superior Court County of Ventura

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