Filed 11/14/12 Estate of Ringgold CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Estate of EUGENIA RINGGOLD, Deceased.	B232397 (Los Angeles County Super. Ct. No. SP008233)
NATHALEE EVANS, Petitioner and Appellant, v. THOMAS B. MCCULLOUGH, Jr., as Administrator, Respondent.	

APPEAL from orders of the Superior Court of Los Angeles County. Craig Karlan, Judge. Affirmed.

Nina Ringgold for Petitioner and Appellant.

Douglas S. Fabian for Respondent.

Nathalee Evans contends that the probate court should have appointed her the executor of Eugenia Ringgold's will and that the court made multiple errors in the probate proceedings, including naming another person administrator of the estate. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Eugenia Ringgold created a will and trust before her 2006 death. Tracy Sheen, who had been designated as trustee in an interlineation to the trust document, petitioned to be confirmed as trustee. Ringgold's friend Nathalee Evans challenged the petition and sought to be appointed trustee herself. Ultimately, Sheen was confirmed as trustee, and this Court affirmed Sheen's confirmation. (*Evans v. Sheen* (Mar. 2, 2010, B196909, B201949, B202637, B209064) [nonpub. opns].)

Evans turned to Ringgold's will. In July 2010 she petitioned for the will to be admitted to probate and to be named executor. Evans claimed that Ringgold's original will had been lost and submitted an unsigned photocopy of the will as a copy to be probated. Evans also filed an ex parte petition for appointment as special administrator.

On August 12, 2010, the court appointed an expert, Gary Ruttenberg, pursuant to Evidence Code section 730. The court asked Ruttenberg to examine various issues relating to the will and to determine: the assets of the estate; whether Ringgold's estate should file an amended complaint or response to the demurrer in other pending litigation; and whether the court should appoint any special administrator, personal representative, or executor of the estate.

On August 27, 2010, the court granted the petition for appointment of a special administrator as modified, selecting Thomas B. McCullough, Jr., as the special administrator. By order of September 1, 2010, the court granted McCullough special powers to determine which of Ringgold's assets, if any, were subject to probate administration; to evaluate whether Probate Code section 13100 applied to Ringgold's assets outside her trust or whether a probate was required to administer the assets; to review any and all trust assets to determine whether they should be part of the probate

administration; and to hire legal malpractice counsel to render an opinion as to whether to maintain a legal malpractice action that was then pending. McCullough was issued letters of special administration. His powers were extended on September 30, 2010, to grant him the power to appear in the related legal malpractice action.

As special administrator, McCullough opposed Evans's ex parte petition for letters of special administration. He pointed out that the will Evans had submitted was invalid because it was not signed. Sheen, the trustee of the Ringgold Trust, also objected to the appointment of Evans as executor.

On November 18, 2010, McCullough petitioned to be named administrator of the estate. In the petition he specified that no original will had been located and that accordingly, Ringgold had died intestate.

On December 8, 2010, Evans filed a new petition for probate of Ringgold's will and for letters testamentary, this time with a will signed by Ringgold.

McCullough filed a supplement to his petition for probate on January 14, 2011, in which he advised the court that he was unable to cash the estate's savings bonds without a more detailed letter of special administration specifying his authority to cash particular bonds. Evans objected to the original petition and to the request for additional authority.

On January 21, 2011, the probate court denied Evans's petitions to probate the two versions of the will and granted McCullough's petition for letters of administration pursuant to Probate Code sections 8001, 8402, and 8502. After several months of briefing and objections concerning the contents of the resulting orders, on April 8, 2011, the court issued an order encompassing Evans's petitions and McCullough's petition. The court made a series of factual findings, including the following: Ringgold's 1997 will was a pour-over will directing that any assets of her estate go to her trust; Evans witnessed the will and was therefore aware beginning in 1997 that she was the named executor; Evans had been involved in litigation over the control of the trust; Evans and her counsel had a copy of Ringgold's will at least since November 2006; and Evans made no attempt to act as executor of the estate until she failed to accomplish her goals in the trust litigation.

The court set forth its reasons for declining to appoint Evans as Ringgold's executor and denied with prejudice her petition to probate the unsigned will. The court partially granted Evans' petition to probate the signed will: the court admitted the will to probate but appointed McCullough the administrator with will annexed. Evans appeals.[1]

DISCUSSION

I. Refusal to Appoint Evans as Executor

The probate court described in detail its five reasons for declining to appoint Evans executor of Ringgold's estate, each of which it found to be sufficient to support its decision. First, the court in the trust litigation had determined that Sheen and not Evans should be the trustee of the trust, and that determination had been upheld on appeal. Through her attorneys, Sheen had nominated McCullough to be administrator, and all the estate's assets were to be distributed to Sheen as trustee of the trust.

Second, Evans had, in the trust litigation, argued that Ringgold intended the same person to execute the will and serve as trustee of the trust; based upon the positions Evans had already taken, the confirmation of Sheen as trustee meant that Sheen was entitled to serve as administrator of the estate. Sheen nominated McCullough to serve in her place, and that nomination should be honored.

Third, Probate Code section 8001 provides that unless good cause is shown for the delay, a person named in a will as an executor may be held to have waived the appointment if he or she fails to petition the court for administration of the estate within 30 days of learning of the decedent's death. Evans knew she was the executor starting in 1997 and she had a copy of the will as early as 2006, yet she waited until 2010 to petition the court to administer the estate. Evans's explanation for the delay—that she was litigating her claim to be the trustee—did not establish good cause to the probate court but instead demonstrated that the instant litigation was filed "as an end-run" against

[1] We grant Evans's request for judicial notice of various documents filed in the litigation related to Ringgold's estate, trust, and associated matters.

the result of the trust litigation. The court's fourth reason for refusing to appoint Evans as executor was that she had neglected the estate for nearly five years. Citing Probate Code sections 8402, subdivision (a) and 8502, subdivision (c), the court concluded, "It would be unconscionable for the Court to appoint Evans as Executor when she has so grossly neglected the Estate for almost five (5) years."

Finally, the court noted that appointing Sheen's preferred administrator tended to give the utmost effect to Ringgold's decisions and desires and was in that respect consistent with recent amendments to the Probate Code.

Evans first contends that the hearing on her petition was insufficient because she was not afforded the opportunity to present evidence, examine or cross-examine witnesses, respond to sua sponte judicial notice of documents, or respond to constructions asserted regarding the will or the trust. Evans, however, has not demonstrated that she asked the court for the opportunity to do any of those things when her petition was heard. Evans's citations to the record reflect that she later asserted that no evidence had been taken in conjunction with her disputes about the precise wording of the court's order, but this discussion occurred at a later hearing. By failing to object in a timely manner or to contemporaneously request the expanded hearing she now claims the court should have afforded her, Evans forfeited her claim. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564 [appellate courts ordinarily do not consider claims made for the first time on appeal which could have been but were not presented to the trial court; each party is obligated to raise any issue or infirmity that might subject the resultant judgment to attack].)

Next, Evans complains that the court gave no reason to deny admission of what she terms "the copy of the lost will" she originally petitioned to admit to probate. This purported will was unsigned, and the other will, later submitted, was signed. Evans offers no legal authority to support the proposition that the court should have admitted to probate an unsigned document purporting to be a will when the testator's original signed will was also available, nor does she demonstrate that this issue has any bearing on the issue of her status as executor. Evans has not established any error here. (*Department of*

Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. (2002) 100 Cal.App.4th 1066, 1078 ["Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review"].)

Although Evans disputes all five of the court's independently sufficient justifications for declining to name her as executor, we conclude that the court did not abuse its discretion. Probate Code section 8001 provides that, "Unless good cause for delay is shown, if a person named in a will as executor fails to petition the court for administration of the estate within 30 days after the person has knowledge of the death of the decedent and that the person is named as the executor, the person may be held to have waived the right to appointment as personal representative." The court observed that Evans had known she was executor since the will was signed and that she had a copy of the will since at least 2006, but that she had not acted until 2010 when she lost her bid to become trustee of the Ringgold trust. The court concluded that Evans had failed to demonstrate good cause for her multi-year delay in seeking appointment as executor.

Evans attempts to undermine this ruling but does so by mischaracterizing the ruling, attempting to employ a different legal standard, and raising irrelevant factual claims. First, Evans asserts that the court found that "she was prohibited from being the executor" because she did not probate the will within 30 days of Ringgold's death. The court made no such ruling: the court instead concluded that Evans had failed to act promptly under the Probate Code and that she had shown no good cause for her delay. Evans points out that she acted in a timely manner to bring the later-discovered signed copy of the will to the court's attention, but this is irrelevant to the delay between Ringgold's death and Evans's attempts to secure appointment as the executor. She could have filed a petition to probate the unsigned copy of the will as a copy of a lost will in 2006, but Evans did not file that petition until 2010, and she did not establish good cause for that delay. She also argues that "[t]here was no evidence that Evans engaged in willful or negligent delay" in presenting the will to the court, but Probate Code section 8001 does not require that willful or negligent delay be established in order to decline to

appoint a named executor as personal representative, but only a delay of more than 30 days that is not shown to be for good cause.

Evans has failed to demonstrate any error in the court's conclusion that she had failed to petition the court to be named personal representative within 30 days of learning about Ringgold's death and that she also failed to demonstrate good cause for the many years of delay. As the probate court considered each articulated basis for its ruling to be independently sufficient to support the ruling, and we have concluded that the ruling on this basis was not an abuse of discretion, we need not address Evans's arguments that the other bases for the court's ruling were flawed. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 259 [appellate courts do not address issues when their resolution is unnecessary to the disposition of the appeal].)

II. Remaining Contentions

Most of Evans's other arguments pertain to alleged errors in granting McCullough's petition to administer the will. Among other things, she claims that he had no standing to file it; that he failed to provide proper notice and to follow other statutory procedures, including giving a bond; that his petition should have been stricken; that it should not have been heard until after the court heard Evans's petition; that all the orders for special administration of the Ringgold estate were made without notice and without bond in violation of the federal and California Constitutions; and that the court should have granted her motion to vacate the orders appointing McCullough as administrator. Evans also attempts to appeal a number of rulings not specifically identified in her notice of appeal, such as the order appointing the legal expert under Evidence Code section 730; McCullough's initial appointment as special administrator and subsequent orders delineating and extending his powers; and the order for payment of court expert fees.

We need not address the merits of any of these claims, however, because Evans has no standing to raise them. The court declined to appoint Evans as executor, and we affirm that decision. As a result, Evans has no interest in the administration of the Ringgold estate. Evans is not an heir of Ringgold and has acknowledged that she has no

interest in the estate beyond having been named by Ringgold as executor. Evans, therefore, cannot demonstrate that she has been aggrieved by any of the claimed errors in the handling of an estate to which she is neither executor nor heir. As she has not suffered any legal injury, she lacks authority to raise these claims on appeal. (Code Civ. Proc., § 902; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736-737 [to have standing to appeal, a person must be aggrieved in the sense that his or her rights or interests are injuriously affected]; *Estate of Thor* (1935) 11 Cal.App.2d 37, 37-38 [stranger to estate has no right to appeal orders made in probate proceedings].)

Evans also argues that Probate Code section 1303 is unconstitutional to the extent that it makes orders granting or revoking letters of special administration nonappealable. Evans contends that this provision of the Probate Code "impairs or destroys appellate jurisdiction" in a manner that substantially impairs the due process, equal protection, and property rights of African-American families. To the extent that this is an equal protection argument, Evans has provided no evidentiary showing to support her contention that this provision disproportionately impacts a protected group. With respect to her due process claim, Evans's argument is based on her view that she had property rights as the executor named in the will. Evans has failed, however, to provide any legal authority to support the contention that she had a property interest or that she was deprived of due process by the appointment of a special administrator. Finally, to the extent that Evans's constitutionality claim is based on the idea that the statute impairs the courts' right of appellate review, the appealability of probate orders is conferred by statute. (*Estate of Schechtman* (1955) 45 Cal.2d 50, 54 ["The courts have consistently held that appeals in probate matters are limited to those expressly provided by statute"]; *Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1125-1126 [no right to appeal from any probate orders except those specified in the Probate Code].) As a result, even assuming Evans had standing to challenge the constitutionality of section 1303 in this proceeding, she failed to establish any basis for relief.

DISPOSITION

The orders are affirmed. Respondent shall recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.