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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

Estate of Douglas R. Tompkins, Deceased.	B292712
DEBRA B. RYKER and KRISTINE MCDIVITT TOMPKINS, Plaintiffs and Appellants, v. SUMMER TOMPKINS WALKER, Defendant and Respondent.	Los Angeles County Super. Ct. No. 17STPB11023

APPEAL from an order of the Superior Court of Los Angeles County, David J. Cowan, Judge. Affirmed.

Sheppard, Mullin, Richter & Hampton, Adam F. Streisand, Valerie E. Alter, Golnaz Yazdchi and Meghan McCormick for Plaintiffs and Appellants.

White & Case, Bryan A. Merryman, Matthew P. Lewis and Earle Miller for Defendant and Respondent.

INTRODUCTION

Douglas R. Tompkins, founder of The North Face and Esprit companies, died unexpectedly in 2015. His estate plan includes a living trust into which he transferred all his assets prior to his death as well as a will bequeathing any remaining property to the trustee. The trust provides that upon Tompkins's death, his daughters would receive only personal property of nominal value.

One of Tompkins's daughters, Summer Tompkins Walker (Summer), has attacked the estate plan on several fronts. Summer first filed a probate action challenging the validity of the trust, arguing that Tompkins was domiciled in Chile and/or Argentina at the time of his death and the law of his domicile (i.e., forced heirship laws that would provide her a substantial portion of his estate) should be applied. We rejected that position in a prior unpublished decision, holding that the strong policy of this state in favor of freedom of testation precludes the application of forced heirship laws in this forum.

While the prior appeal was pending, Summer initiated litigation in Chile, also seeking the application of that country's forced heirship laws. That matter is, as far as we are aware, still pending.

Tompkins's wife Kristine McDivitt Tompkins (Kristine) and his business manager Debra B. Ryker (together, petitioners) are co-trustees of the trust and were named as executors in Tompkins's will. In the present action, they petitioned the probate court to admit Tompkins's will to probate and asked the court to appoint them as executors of the estate, despite the

seeming absence of any assets requiring court oversight. They later explained that the estate has a potential legal malpractice claim against California attorneys relating to advice they gave Tompkins regarding domicile and the possible application of forced heirship laws. Petitioners explained that they needed to open probate proceedings in order to preserve that claim. Summer objected and the court denied the petition in part but issued letters of special administration allowing petitioners to take all action necessary to preserve and pursue the professional negligence claim.

Petitioners contend the court erred as a matter of law when it denied their petition and refused to admit Tompkins's will to probate after they established the probate court had a basis for jurisdiction. In their view, under Probate Code¹ section 8006, subdivision (a), a court is required to admit a decedent's will to probate if jurisdiction is proper. We disagree because the statute gives the court discretion to admit a will in "appropriate" circumstances. Petitioners also contend that letters of special administration fail to provide sufficient relief. We reject this contention as well and therefore conclude that petitioners failed to establish either error or prejudice. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

1. Background

Tompkins died unexpectedly in 2015. He is survived by his wife Kristine and two daughters from a previous marriage, only one of whom (Summer) is involved in the present proceedings. During the last 20 years of his life, Tompkins reportedly spent

¹ All undesignated statutory references are to the Probate Code.

much of his time in South America, particularly in Chile and Argentina, implementing philanthropic conservation-related projects.

2. Tompkins's Estate Plan

In 1994, Tompkins created a revocable inter vivos trust and executed a general assignment transferring all his assets into it. Tompkins and Ryker were the co-trustees of the trust until Tompkins died, at which time his wife Kristine became a co-trustee. Ryker has managed the trust, including its investments, accounts, assets, and expenditures, since the trust's creation in 1994. The trust's significant assets include the stock of a California corporation and membership interests in two Delaware limited liability companies.

Tompkins amended the trust several times and executed the operative trust documents in March 2012. And as before, the 2012 trust documents include a general assignment transferring all Tompkins's property (financial assets, real property, and personal property) to the trust. Tompkins also executed a will transferring any remaining property to the trustee upon his death.

The trust provides that upon Tompkins's death, Summer is to receive only selected items of Tompkins's personal property and the will makes no provision for her.

3. Summer's Attacks on the Estate Plan

3.1. Trust Litigation²

Shortly after Tompkins's death, Summer filed a petition in the Los Angeles Superior Court under section 17200³ seeking to invalidate the trust and, more particularly, its choice-of-law provision.⁴ Specifically, Summer alleged Tompkins lived somewhere in South America (Argentina and/or Chile) at the time of his death and asserted forced heirship laws applicable in those countries should be applied. Those laws would, she claimed, entitle her to a substantial share of Tompkins's assets, contrary to his express wishes.

The trustees moved for summary judgment arguing that section 21103 and the choice-of-law provision of the trust precluded the application of Chilean law. In response, Summer asserted, as a general proposition, that the law of a decedent's domicile should govern the distribution of a decedent's estate and therefore California should, as a matter of comity, recognize the applicability of Chilean law regarding Tompkins's estate and trust. The court ruled in favor of the trustees, noting the trust contained a clear choice-of-law provision selecting California law

² The facts in this section are drawn from our unpublished opinion in *Walker v. Ryker, et al.*, No. B285872, filed September 28, 2018.

³ Section 17200 authorizes a trustee or a trust beneficiary to petition the probate court concerning the internal affairs of a trust and to construe a trust instrument and determine the validity of specific trust provisions. (§ 17200, subd. (b)(1) & (3).)

⁴ The trust documents provide for the application of California law to any legal dispute relating to the trust, including its validity.

to govern the trust and that under section 21103, such a provision is valid and enforceable unless it violates public policy.

On appeal, Summer contended that the application of California law violated California's public policy in favor of comity—a discretionary doctrine which permits a California court to enforce a judgment from or apply the law of a foreign jurisdiction under limited circumstances. We concluded, as the court below did, that comity does not override this state's strong public policy in favor of freedom of testation. Accordingly, we affirmed the judgment in favor of the trustees.

3.2. Chilean Litigation

In October 2017, while her appeal in the trust litigation lawsuit was pending in this court, Summer filed a lawsuit in Chile seeking to nullify Tompkins's will and obtain a portion of Tompkins's assets through the application of Chilean law and intestate succession. Summer asserted that under Chilean law, Tompkins's estate plan (and more particularly his use of a trust and corporations to hold title to assets) was fraudulent, in that it was designed to avoid Chilean tax and forced heirship laws. It appears that action is still pending.

4. Current Proceeding and the Appeal

In December 2017, petitioners filed a petition to admit Tompkins's will to probate. But because Tompkins had assigned all his assets to the trust, they did not initially identify any specific property of the estate. In response to the court's inquiry as to why probate was necessary, petitioners stated the estate contained one asset: A potential professional negligence claim against the California attorneys and law firm that provided advice to Tompkins regarding estate planning and the possible

application of forced heirship laws in South American countries, including Chile. Petitioners asked the court to admit Tompkins's will to probate and, per the will, to appoint Kristine and Ryker as co-executors of the estate in order to obtain a tolling agreement and potentially prosecute that legal claim. They argued that under section 8005, the existence of a cause of action required to be prosecuted in California was property sufficient to confer jurisdiction on the probate court. Further, petitioners contended, so long as jurisdiction was established, the probate court was required under section 8006 to grant the petition and admit the will to probate.

Summer objected to the admission of Tompkins's will to probate, claiming the court lacked jurisdiction to open probate because Tompkins was purportedly domiciled in Chile at the time of his death and that it was more appropriate to distribute his estate there. Further, Summer argued, the alleged property that petitioners asserted could provide a basis for jurisdiction—a legal malpractice claim—was illegitimate and therefore insufficient to support jurisdiction. In the alternative, Summer urged that if the probate court took any action, it should appoint petitioners as special administrators of the estate for the limited purpose of handling the legal malpractice claim.

Petitioners then argued that Summer, who is not a beneficiary under Tompkins's will, lacked standing to object to their petition to open probate proceedings and admit Tompkins's will.

The court held six hearings on the petition and requested multiple sets of supplemental briefing from the parties. On July 31, 2018, the court conducted its final substantive hearing on the petition and Summer's objection. On August 23, 2018, the court

issued its final ruling granting the petition in part and denying it in part, without prejudice.

On the question of jurisdiction, the court concluded that the potential claim for professional negligence was colorable and constituted property in California sufficient to convey jurisdiction on the court under section 8005, subdivision (b). But the court declined to admit Tompkins's will, citing section 8006, subdivision (a), which authorizes a court to do so "where appropriate." In the court's view, it was not appropriate to admit the will and open probate proceedings at that time because doing so could involve the litigation of complex fact-intensive issues and, given that the estate contained no assets other than the potential legal claim, it was unnecessary for the court to put the parties to that burden. Instead, the court issued letters of special administration, appointing petitioners as representatives of the estate for the limited purpose of preserving or pursuing the legal malpractice claim. And by denying the petition without prejudice, the court made clear that to the extent any additional action on behalf of the estate was needed in the future, petitioners could return to probate court.

Petitioners timely appeal.

DISCUSSION

Petitioners advance the following arguments: (1) The court erred in denying the petition in part based on its conclusion that a determination of Tompkins's domicile would be necessary in order to admit Tompkins's will to probate; (2) The court was required to admit Tompkins's will after petitioners established a basis for probate jurisdiction; (3) The court's issuance of letters of special administration is an insufficient remedy; and (4) The

court erred in finding that Summer had standing to object to the petition and the admission of the will.

We address the second and third issues, concluding the court has the discretion to admit a will to probate—or not, as appropriate—under section 8006 and the court did not abuse its discretion here. Further, we conclude the letters of special administration adequately address petitioners’ stated goal of preserving the estate’s potential cause of action for legal malpractice. Stated differently, petitioners have failed to demonstrate prejudice resulting from the allegedly erroneous ruling, as is required on appeal. In light of these conclusions, it is unnecessary for us to consider petitioners’ remaining contentions.

1. The probate court was not required to open probate proceedings and admit Tompkins’s will.

1.1. Standard of Review

In determining whether it was required to admit Tompkins’s will upon a showing of jurisdiction, the court construed section 8006, subdivision (a). We review matters of statutory interpretation de novo. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432; *Nist v. Hall* (2018) 24 Cal.App.5th 40, 45.)

1.2. Under section 8006, subdivision (a), the probate court has the discretion to admit a will to probate “where appropriate.”

Petitioners’ primary contention is that after a basis for probate jurisdiction is established under section 8005, the probate court is *required* under section 8006 to admit a

decedent's will to probate.⁵ Accordingly, petitioners claim the court erred as a matter of law in refusing to admit Tompkins's will to probate. We disagree.

In order to establish probate jurisdiction, petitioners were required to establish, among other things, "[t]hat the decedent was domiciled in this state or left property in this state at the time of death." (§ 8005, subd. (b)(1)(B).) Petitioners did not base their jurisdictional argument on Tompkins's domicile—an issue the court noted could be complex and time-consuming to litigate—and instead demonstrated to the court's satisfaction that Tompkins left property in California in the form of a potential claim for professional negligence against attorneys and a law firm doing business in California. The other elements of jurisdiction were undisputed.

Having established jurisdiction, petitioners argued below, as they do here, that the court was *required* to grant their petition and admit Tompkins's will to probate. The relevant statutory provision, section 8006, subdivision (a), provides:

"If the court finds that the matters referred to in paragraph (1) of subdivision (b) of Section 8005 are established, the court shall make an order determining the time and place of the decedent's death and the jurisdiction of the court. Where appropriate and on satisfactory proof, the order shall admit the decedent's will to probate and appoint a personal representative. The date the will is admitted to probate shall be included in the order."

⁵ Petitioners do not argue, in the alternative, that the court abused its discretion.

In considering whether the statute required the court to admit Tompkins's will, as petitioners claim, we apply well established legal principles. “ “As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose.” (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) We begin by examining the statutory language because the words of a statute are generally the most reliable indicator of legislative intent. (*People v. Watson* (2007) 42 Cal.4th 822, 828; *Hsu v. Abbata* (1995) 9 Cal.4th 863, 871.) We give the words of the statute their ordinary and usual meaning and view them in their statutory context. (*People v. Watson, supra*, at p. 828.) ... “If the statute's text evinces an unmistakable plain meaning, we need go no further.” (*Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal.4th 503, 508.’ (*In re C.H.* (2011) 53 Cal.4th 94, 100.) ‘ “Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute.” [Citation.]’ [Citation.]” (*1550 Laurel Owner's Assn., Inc. v. Appellate Division of Superior Court* (2018) 28 Cal.App.5th 1146, 1151.)

Consistent with these principles, we begin with the language of section 8006, subdivision (a). Specifically, that section provides, “Where appropriate and on satisfactory proof, the order shall admit the decedent's will to probate and appoint a personal representative.” Giving this portion of the statute its plain and ordinary meaning, it appears the Legislature intended the probate court to admit a decedent's will only “where appropriate.” “Appropriate” means “especially suitable or compatible,” or “fitting.” (Merriam-Webster's Collegiate Dict.

(10th ed. 2001) p. 57.) And the determination of whether an action is “appropriate” is inherently subjective—and discretionary.

Petitioners do not address the plain and ordinary meaning of the language of the statute—a telling omission. Instead, they attempt to distinguish a case cited both by Summer and the court, *Estate of Daughaday* (1914) 168 Cal. 63. We note, however, that where the meaning of a statute is plain and unambiguous, we need not proceed further with our analysis. We see no ambiguity in the Legislature’s directive and, in particular, we conclude the statute is not reasonably susceptible to petitioners’ interpretation, i.e., that the probate court is required, in all circumstances, to admit a decedent’s will to probate if jurisdiction is established.

In any event, and as we now explain, petitioners have failed to establish that the court’s ruling was prejudicial.

2. Petitioners fail to establish that the court’s ruling, even if erroneous, was prejudicial.

We will not reverse a judgment or order unless it is both erroneous and prejudicial, i.e., results in a miscarriage of justice. (Cal. Const., art VI, § 13.) Here, petitioners sought to admit Tompkins’s will and open probate to preserve, and possibly pursue, a potential malpractice claim against attorneys who had advised Tompkins on the subject of domicile, residency, and the application of forced heirship laws in South America. And as noted, by issuing letters of special administration the court gave petitioners the limited authority to do just that.

Petitioners nevertheless contend that they, on behalf of the estate, are prejudiced by the court’s decision to authorize a limited appointment. They offer several rationales, none of which

is persuasive, mainly because the court denied their petition *without prejudice*. In other words, if the conditions identified by petitioners come to pass, they may return to the probate court to seek additional relief.

For example, petitioners assert that because the estate contains no assets other than the potential malpractice claim, no assets are available to finance the litigation of that claim. But as the court noted, the estate has not yet suffered any damages as a result of the allegedly negligent legal advice regarding domicile, forced heirship, and other issues relating to the ultimate distribution of Tompkins's assets. Those damages will be suffered—if at all—upon the resolution of the Chilean action. It appears, then, that the malpractice claim is not yet ripe and there is accordingly no need to finance litigation at this point. Should that need arise, petitioners may return to the court and again petition for the admission of Tompkins's will and seek any other remedies they deem necessary at the time.⁶

We are similarly unconvinced by petitioners' argument that they cannot execute their fiduciary duties to the estate without knowing who the beneficiaries are. According to the will's own terms—and Tompkins's estate plan generally—the only beneficiary of the will is the trustee. Summer, who is not a beneficiary under the will, had the opportunity to—but did not—challenge the will's validity. At present, then, petitioners' only

⁶ We reject petitioners' claim that "[t]here is no procedural basis upon which [they] could rely to 'return to court for further instruction'" Because the court denied their petition without prejudice, petitioners may, among other things, bring a second petition to open probate and admit Tompkins's will.

fiduciary obligation is to preserve the estate's sole asset under the special appointment provided by the court.

DISPOSITION

The order is affirmed. Summer Tompkins Walker shall recover her costs on appeal.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.