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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JACK GOULDEN,

Plaintiff and Appellant,

v.

TERRY HINRICHER, as
Trustee, etc.,

Defendant and Respondent.

2d Civil No. B286429
(Super. Ct. No. 56-2012-
00425329-PR-TR-OXN)
(Ventura County)

Jack Goulden (Jack), the beneficiary of the Goulden Survivor's trust (Survivor's trust) appeals from the probate court's order approving the sixth and seventh accounts. He contends the court erred because it (1) did not "scrutinize" the accounts before approving them, (2) approved excess trustee fees, and (3) personally charged the beneficiaries to pay outstanding costs and fees. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Dorothy Goulden and her husband created the Goulden living trust. Her husband died in 2005. Upon his death,

several sub-trusts were created, including the Survivor's trust. Dorothy became the sole trustee and beneficiary of the Survivor's trust.

In 2010, Dorothy resigned as trustee of the Survivor's trust and appointed her accountant, Terry Hinricher, as successor trustee. The trust provides that upon Dorothy's death, its assets shall be equally divided among her children, Jack Goulden, Laurie Goulden, and Elliot Goulden. Dorothy died in 2014.

In 2012, Jack petitioned to compel Hinricher to prepare an accounting of the trust. (Prob. Code, § 17200, subds. (a), (b)(6) & (7)(C).)¹ Hinricher filed the first account, to which Jack objected. The probate court referred the matter to mediation. In 2014, the parties settled the first account, and the court approved the settlement. The same year, the probate court approved the second account. In 2015, Jack signed a written approval of the third through fifth accounts, and those approvals were filed with the court.²

In 2016, Hinricher petitioned for approval of the sixth account, which included trustee fees of \$78,398.57 and attorney fees and costs of \$9,969.23. Jack objected to the sixth account on the grounds that (1) the trustee fees were excessive, and (2) checks from the trust account were missing or out of sequence.

¹ Further unspecified statutory references are to the Probate Code.

² The approvals of the first through fifth accounts were the subject of a prior appeal that we dismissed because the appeal was taken from a nonappealable order. (*Goulden v. Hinricher* (Feb. 26, 2018, B282560 [nonpub. opn.] (*Goulden I*)).

Hinricher filed a supplement to the sixth account, which explained that the missing checks were voided.

In 2017, Hinricher petitioned for approval of the seventh account. The account showed that the entire trust estate had been distributed to the beneficiaries. Hinricher requested an order approving trustee fees of \$45,065.70 for the seventh account period. He also requested an order approving attorney fees and costs of \$21,916.31 incurred as a result of the ongoing litigation with Jack and Laurie. Hinricher had set aside reserve funds for final expenses, but they only covered a portion of the fees and costs. Hinricher requested that the beneficiaries be “personally charged” with the outstanding balance of the fees and costs. Elliot objected on the grounds that only Jack and Laurie should be personally charged for fees and costs because only they were involved in the litigation. No other objections were filed.

After an evidentiary hearing, the probate court approved the sixth and seventh accounts and the trustee and attorney fees. The court sustained Elliot’s objection, and it ordered that the trustee fees incurred from defending the first through fifth account be charged only to Jack and Laurie. The court ordered the remaining balance of fees and costs be “charged” equally among all beneficiaries.

DISCUSSION

Approval of Sixth and Seventh Accounts

Jack contends the probate court erred when it approved the sixth and seventh accounts because it did not “scrutinize” them to determine if Hinricher acted “lawful[ly].” We disagree because the record shows the court scrutinized the accounts.

The probate court has the duty to “scrutinize” the account and inquire into the “prudence of the trustee’s administration.’ [Citations.]” (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427 (*Schwartz*).) We review an order approving a trustee’s account for abuse of discretion. (*Estate of McKenzie* (1962) 199 Cal.App.2d 393, 398.)

Here, the court considered the contents of the sixth and seventh accounts, which included a summary of accounts detailing charges and credits, schedules supporting the accounts with a description of each receipt and disbursement from the trust, and a report of administration. (§§ 1060 et seq., 10900.) The court also reviewed documents Hinricher filed in support of the accounts including invoices, billings, copies of checks, and account statements.

The court also considered evidence at the hearing. Hinricher testified about charges and credits in the accounts, his activities during the sixth and seventh account periods, and his rate of compensation. Jack did not object to any charge or credit in the accounts, nor did he object to Hinricher’s actions as trustee. His only written objection to Hinricher’s accounting pertained to missing checks in the sixth account. But Hinricher explained that these checks were voided. After it reviewed all the evidence, the court approved the accounts.

Jack asserts that Hinricher breached his “fiduciary duties” and contends the court neglected to inquire into such unlawful acts. For example, Jack asserts that Hinricher “failed to legitimately invest a single dollar of trust property.” But he does not support this assertion, nor any other assertion in his brief, with a citation. We will not consider unsupported

contentions. (Cal. Rules of Court, rule 8.204 (a)(1)(C)³; *Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1037.) There was no abuse of discretion.

Trustee Fees

Jack contends the probate court erred when it approved Hinricher's trustee fees. We review the court's order approving trustee fees for abuse of discretion. (*Estate of Gump* (1991) 1 Cal.App.4th 582, 597 (*Gump*).) Jack has not shown the court abused its discretion because the fees are reasonable.

A trustee is owed "reasonable compensation" for services rendered. (*Gump, supra*, 1 Cal.App.4th at p. 597.) To determine whether a trustee's compensation is reasonable, the probate court may consider the following factors set forth in rule 7.776: "(1) The gross income of the trust estate; [¶] (2) The success or failure of the trustee's administration; [¶] (3) Any unusual skill, expertise, or experience brought to the trustee's work; [¶] (4) The fidelity or disloyalty shown by the trustee; [¶] (5) The amount of risk and responsibility assumed by the trustee; [¶] (6) The time spent in the performance of the trustee's duties; [¶] (7) The custom in the community where the court is located regarding compensation authorized by settlors, compensation allowed by the court, or charges of corporate trustees for trusts of similar size and complexity; and [¶] (8) Whether the work performed was routine, or required more than ordinary skill or judgment."

Here, the probate court analyzed each rule 7.776 factor and found: (1) the trust estate was worth approximately \$3.4 million; (2) Jack did not present evidence of any failure

³ Further unspecified rule references are to the California Rules of Court.

regarding Hinricher's administration of the trust; (3) a "competent, experienced accountant at the top of their game" could do such work; (4) Jack did not present evidence of Hinricher's infidelity or disloyalty; (5) Hinricher assumed risk and liability since the estate was "three to four million dollars" and there were "conceivably litigious beneficiaries"; (6) Hinricher's time spent on trustee duties was "uncontradicted"; (7) the comparable rate of compensation for a trustee in the Los Angeles area ranged from \$375 to \$450 an hour; and (8) Hinricher performed some "fairly sophisticated work." The court based these findings on the evidence, including Hinricher's detailed testimony and invoices describing his activities, the time spent for each activity, and the total amount charged for each activity.⁴ The court properly found that Hinricher's fees were reasonable after balancing all the rule 7.776 factors.

Jack contends the probate court abused its discretion when it approved Hinricher's hourly rate of \$400. However, the evidence supports the court's finding. Hinricher testified that other accountants with comparable experience and knowledge in the Los Angeles market charged \$375 to \$450 an hour. Jack did not present any contrary evidence. He did not present witnesses at the hearing or any documents to support his contentions. There was no abuse of discretion. (*Gump, supra*, 1 Cal.App.4th at p. 597.)

⁴ Jack attached a chart summarizing Hinricher's invoices as "Exhibit A" to his opening brief. We disregard this exhibit because it is outside the appellate record. (Rule 8.204(d); *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.)

Fees and Costs Charged to Beneficiaries

Jack contends the probate court erred when it ordered him and Laurie to pay the outstanding balance of trustee and attorney fees and costs “out of [their] own pockets.” But we held in *Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 236, that a court has the authority to order a beneficiary to return already distributed trust assets to pay a trustee’s expenses of administration.

Here, the beneficiaries received ample trust assets from which to repay the fees and costs. The record shows that Hinricher distributed over \$3 million to the beneficiaries. Although Hinricher withheld funds from the trust to pay final administration expenses, the amount was insufficient to pay all the fees and costs. The court thus properly ordered the beneficiaries to pay the outstanding fees and costs from their already distributed shares.

Res Judicata

In addition to challenging the sixth and seventh accounts, Jack seeks to challenge the first through fifth accounts on the grounds that the accounts are inaccurate and that Hinricher acted unlawfully. Jack is precluded by res judicata from raising these arguments because they were conclusively determined and cannot be relitigated. (*Lazzarone v. Bank of America* (1986) 181 Cal.App.3d 581, 591 (*Lazzarone*)).

Res judicata precludes litigation on issues that have been litigated or could have been litigated in a prior proceeding and have been determined final. (*Murphy v. Murphy* (2008) 164 Cal.App.4th 376, 401.) In a probate case, res judicata applies to an interim order settling or approving a trustee’s account because it is “conclusive as to all matters passed upon.” (*Lazzarone*,

supra, 181 Cal.App.3d at p. 591.) When a court passes on an account, it “necessarily” inquires into the accuracy and truthfulness of an account and the propriety of a trustee’s actions. (*Id.* at pp. 594-595.) A party is thus precluded from litigating these issues after a court’s approval of an account has become final. (*Ibid.*)

Here, the first through fifth accounts were approved or settled years ago. In 2014, the probate court approved the settlement of the first account and approved the second account. The time to appeal the court’s approvals has long passed and the orders are now final. (*Estate of Reed* (2017) 16 Cal.App.5th 1122, 1127; § 1300; rule 8.104.) In 2015, Jack signed a written approval of the third through fifth accounts, and those approvals were filed with the court. Moreover, Jack petitioned to set aside the first through fifth accounts, and the court denied that petition. He then filed a motion to vacate the order denying the petition to set aside these approvals, and the court denied the motion. He appealed the order denying the motion to vacate, but we dismissed that appeal. (*Goulden I, supra*, B282560 at p. 1.) These accounts are now final. Jack is precluded from arguing issues that he could have litigated in an earlier proceeding.⁵

Jack contends that res judicata does not apply because the probate court did not issue a “valid” order on each of these accounts, with the exception of the second account. But in

⁵ Jack contends for the first time in his reply brief that the approvals were obtained through extrinsic fraud, which are grounds to set aside a final order approving an account. (*Lazzarone, supra*, 181 Cal.App.3d at pp. 596-597.) We disregard arguments raised for the first time in the reply brief. (*Hernandez v. Vitamin Shoppe Industries, Inc.* (2009) 174 Cal.App.4th 1441, 1461, fn. 10.)

the prior appeal, we rejected a similar argument that there were no “formal orders” from which the court could set aside or vacate. We concluded that those accounts were approved and that Jack acknowledged those approvals when he petitioned to set them aside. (*Goulden I, supra*, B282560 at pp. 3-4.) Because the first five accounts are final and res judicata applies, we do not address Jack’s contentions on the first five accounts.

DISPOSTION

The judgment is affirmed. Hinricher shall recover costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Glen M. Reiser, Judge

Superior Court County of Ventura

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