Filed 10/19/18 Estate of Stevens CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

Estate of DAVID LEE STEVENS, Deceased.	B287850 (Los Angeles County Super. Ct. No. 17STPB03883)
RICHARD B. ASHWORTH, as Administrator, etc., Petitioner and Respondent, v. NORMA DUVAL, Objector and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Brenda Penny, Judge. Affirmed.

Hoyt Law Firm, A Professional Law Corporation and Kenneth C. Hoyt, for Objector and Appellant.

Snyder and Hancock and Scott A. Hancock for Petitioner and Respondent.

Appellant Norma Duval appeals the denial of her petition to be appointed administrator of the estate of David Lee Stevens. The probate court instead appointed respondent Richard B. Ashworth, the nominee of Stevens's aunt. Appellant, who had been in a relationship with Stevens for many years, contends she established that she and Stevens had entered into a valid domestic partnership in the state of Minnesota. We conclude that the evidence she presented did not establish the existence of a legal domestic partnership in either Minnesota or California. Accordingly, we affirm the order appointing respondent administrator.

FACTUAL AND PROCEDURAL BACKGROUND

On May 4, 2017, appellant filed a petition for administration under Probate Code section 8461, claiming to be the domestic partner of Stevens, who died on April 21, 2017.[1] In her amended petition, appellant stated she and Stevens had been together since 2007.[2] They lived in California throughout their

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[1] Undesignated statutory references are to the Probate Code. Section 8461 provides the order of priority for those who wish to be named administrator of the estate of a person who dies intestate. First priority is to "[s]urviving spouse or domestic partner." (Prob. Code, § 8461, subd. (a); see *Estate of Lewis* (2010) 184 Cal.App.4th 507, 511 ["A person's statutory priority to administer an estate is based on his or her relation to the decedent."].) The purpose of section 8461 is to "'plac[e the administration of the estate] in the hands of persons most likely to manage the estate properly to the best advantage of those beneficially interested.'" (*Estate of Garrett* (2008) 159 Cal.App.4th 831, 836.)

[2] Appellant did not include her petition or first supplemental petition in the clerk's transcript. However, she lodged a copy of the supplemental petition, filed June 21, 2017, when she filed her opening brief. Respondent contends the document was not

relationship. In 2010, they became engaged. She helped him with his jewelry business, paying for half the hotel bills and gas for him to attend shows. She helped Stevens put his brother's house in order after his brother's suicide, and assisted Stevens in caring for his elderly parents before they died. When Stevens fell ill in 2015 and suffered a head injury in 2016, appellant acted as his intermediary with medical personnel, made medical decisions for him, took care of his household expenses while he was incapacitated, and provided care for him when he returned home. The couple began introducing each other as husband and wife, but Stevens's tax attorney recommended they wait to marry until 2017, after his parents' estate settled.

In late 2016, Stevens asked to be placed on appellant's medical insurance. Appellant worked for UnitedHealth Group (UHG), which, according to appellant, has its principal place of business in Minnetonka, Minnesota. Appellant inquired of UHG's human resources department whether that might be possible and received from the company a form entitled "[UHG] Affidavit of Domestic Partnership" (UHG Affidavit). The couple completed the UHG Affidavit, had it notarized, and submitted it to UHG. It was accepted, and Stevens was added to appellant's

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properly placed in the record, but does not suggest it is an inaccurate copy of the pleading or that it was not before the probate court when it issued its ruling. Accordingly, we will take judicial notice of it. (See Cal. Rules of Court, rule 8.155 [reviewing court may order record augmented to include any document filed in the case in superior court]; Evid. Code, § 452, subd. (d) [judicial notice may be taken of the records of any court of this state]; *People v. Preslie* (1977) 70 Cal.App.3d 486, 494 [not per se objectionable that request for judicial notice was made in brief].)

insurance effective January 1, 2017. When completed, the UHG Affidavit stated: "We certify that David Stevens is a Domestic Partner of Norma Duval in accordance with the following eligibility criteria," and "We certify we met the . . . eligibility criteria for establishing Domestic Partnership as of 11/21/2016."[3]

Shortly before Stevens's death, he and appellant hired a realtor in Arizona and began looking for a retirement home. They planned to sell both of their homes in California and purchase a single residence together in Arizona. When Stevens suffered his final illness, the hospital accepted the UHG Affidavit as providing appellant the right to his medical information.

Respondent opposed appellant's petition and filed a separate petition seeking appointment as the nominee of

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[3] The following criteria were listed: "1. We have lived together in an exclusive relationship for at least one year, and intend to keep doing so for a long-lasting and indefinite time period; [¶] 2. We share financial responsibility or my partner is financially dependent on me; [¶] 3. We are not legally barred from entering into a marriage relationship for reasons of an existing marriage, age, mental competence or blood relationship; [¶] 4. We are not in a domestic partnership or marriage with anyone else; [¶] 5. We have not entered into a domestic partnership solely for the purpose of obtaining benefits; and [¶] 6. We have not notified [UHG] that our domestic partnership has been terminated."

Appellant concedes that she and Stevens executed the UHG Affidavit in order to obtain for Stevens health benefits provided by appellant's employer, UHG. The form contains the following acknowledgment: "We have provided this information . . . for the sole purpose of determining our eligibility for Domestic Partnership benefits."

Stevens's aunt.[4] The court requested that the parties brief the issue of the validity of appellant's domestic partnership with Stevens. The parties submitted briefs and the court took the matter under submission.[5] The court ruled in favor of respondent, finding that appellant was not a "Registered Domestic Partner [of Stevens] under California law," and that respondent, as the nominee of Stevens's aunt, had the higher priority to serve as personal representative of the estate. Appellant moved for reconsideration, which the court denied. The court issued an order appointing respondent administrator of Stevens's estate, granting him "[f]ull authority . . . to administer the estate under the Independent Administration of Estates Act" and instructing him to file "a petition for final distribution [by] December 10, 2018." This appeal followed.

DISCUSSION

Section 8460 provides: "If a decedent dies intestate, the court shall appoint an administrator as personal representative." (See 14 Witkin, Summary of Cal. Law (11th ed. 2017) Wills and Probate, § 454, p. 521 ["An 'administrator' is a person appointed

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[4] A person entitled to appointment as the administrator may nominate another, and that nominee has priority "'next after those in the class of the person making the nomination.'" (*Estate of Garrett*, *supra*, 159 Cal.App.4th at p. 837, quoting § 8465, subd. (b).) According to respondent's brief, Stevens's survivors include multiple aunts and one uncle. None object to his appointment.

[5] Neither these briefs nor respondent's petition and opposition are in the record. There is no reporter's transcript. Neither party suggests any evidence was introduced at the hearing.

by the court to manage the estate when the deceased dies intestate."].) Section 8461 provides that a "[s]urviving spouse or domestic partner as defined in Section 37" is entitled to first priority to appointment as administrator.[6] Uncles and aunts of the deceased are in the middle of the priority list, after children, siblings, issue of siblings, parents and grandparents. As Stevens had no survivors in any of those categories, there is no dispute that his aunt was entitled to priority if appellant's claim failed. Under probate law, appointment of the person with the highest priority (or his or her nominee) is mandatory, and unless such person is incompetent or disqualified, the court has no right to appoint another. (*Estate of Garrett*, *supra*, 159 Cal.App.4th at p. 867; *Estate of Cummings* (1972) 23 Cal.App.3d 617, 622.)

The Domestic Partner Act, codified in the Family Code, provides that a domestic partnership is established when the couple "file[s] a Declaration of Domestic Partnership with the Secretary of State pursuant to this division." (Fam. Code, § 297, subd. (b); see Fam. Code, § 298 [directing Secretary of State to prepare form entitled "'Declaration of Domestic Partnership' . . . to meet the requirements of this division"].) From the plain language of the statute, it is clear that to establish a legal domestic partnership, "a declaration of domestic partnership must be filed with the Secretary of State." (*Burnham v. Public Employees' Retirement System* (2012) 208 Cal.App.4th 1576, 1583; see also *S.D. Myers, Inc. v. City & County of San Francisco* (9th Cir. 2003) 336 F.3d 1174, 1178 ["The [Domestic Partner Act] governs the creation and

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[6] Section 37 defines a "'[d]omestic partner'" as "one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State."

registration of domestic partnerships by imposing detailed requirements and procedures that two individuals must follow before obtaining recognition of their union by the state of California."].)

Although appellant asserted that she and Stevens met the criteria under Family Code section 297 to become domestic partners -- neither was married to someone else or in a domestic partnership with someone else, the two were not related by blood or in another way that would prevent them from being married to each other, and both were over 62 years of age (a requirement for opposite sex couples) -- she did not contend that they filed a declaration of domestic partnership with the California Secretary of State. Indeed, on appeal she concedes they did not. Accordingly, they failed to meet the explicit requirements of the statute.

Nonetheless, appellant contends that she and Stevens became domestic partners under Minnesota law when they executed the UHG Affidavit provided by her employer, and that the "full faith and credit" clause of the United States Constitution requires California courts to recognize this domestic partnership. She is mistaken. Article IV, section 1 of the United States Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The UHG Affidavit executed by appellant and Stevens was a private corporate document, whose sole purpose was to permit unmarried couples to obtain employment benefits voluntarily provided by UHG. It was not a "Public act[], Record[], [or] judicial Proceeding[]," and there is no indication it was created for a governmental purpose or filed with any governmental entity.

Moreover, as appellant acknowledges, the state of Minnesota has no laws providing for, permitting or recognizing domestic partnerships.[7] Although California generally recognizes domestic partnerships "validly formed in another jurisdiction" and gives them legal effect here, the legal union at issue must be "substantially equivalent to a domestic partnership as defined [in California]." (Fam. Code, § 299.2; see *In re Marriage of G.C. and R.W.* (2018) 23 Cal.App.5th 1, 17, 18 [parties' date of union was date they married in California, not date they registered as domestic partners in New Jersey; a New Jersey domestic partnership "is not 'substantially equivalent' [citation] to a California domestic partnership for purposes of dissolution" because that state does not afford domestic partners "comparable rights with respect to property division, debt liability, or partner support as California law"].) As Minnesota does not recognize domestic partnerships, it cannot be said that it gives them a legal effect substantially equivalent to a domestic partnership as defined in California.[8]

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[7] Several municipalities within the state have enacted ordinances concerning the subject, and at appellant's request, we have taken judicial notice of the local ordinances of the cities of Minneapolis, St. Paul, Eden Prairie, Northfield, Richfield and Hopkins. None has any applicability here. Appellant has never claimed she or Stevens lived anywhere but California during their relationship.

[8] Nor do any of the city ordinances cited by appellant purport to provide domestic partners registered in those municipalities anything approaching the rights afforded under California law. (See, e.g., City of Minneapolis Code of Ordinances, title 7, ch. 142.10 [purpose of domestic partner ordinance is to provide a

Because appellant did not present evidence to establish she had a registered domestic partnership with Stevens in any jurisdiction, the court did not err in denying her petition to be named administrator of Stevens's estate.[9]

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process for "persons to declare themselves as domestic partners, thus enabling employers to voluntarily provide equal treatment in employment benefits for such partners and their dependents"]; City of St Paul Legislative Code, § ch. 186, § 186.01 [same]; City of Eden Prairie City Ordinance, § 5.73(1) [domestic partner ordinance "does not create rights, privileges, or responsibilities that are available to married couples under state or federal law"].)

[9] Our ruling addresses the entitlement to administer the estate, not the disposition of assets. Respondent contends registration is mandatory for a couple to receive any of the benefits of a domestic partnership. Family Code section 297.5 provides that registered domestic partners "shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses." Under California law, a putative spouse -- a person who believes in good faith that he or she is married -- is entitled to a share of his or her deceased partner's property if the partner dies intestate. (*Estate of Leslie* (1984) 37 Cal.3d 186, 200-201.) The putative spouse doctrine was applied to an unregistered domestic partner in *In re Domestic Partnership of Ellis & Arriaga* (2008) 162 Cal.App.4th 1000 (*Domestic Partnership*), where the court, citing Family Code section 297.5, held: "[A] person with a reasonable, good faith belief in the validity of his or her registered domestic partnership is similarly entitled to protection as a putative registered domestic partner, even if the domestic

DISPOSITION

The court's order is affirmed. Respondent is awarded his costs on appeal.

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MANELLA, P. J.

We concur:

WILLHITE, J. MICON, J.*

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

partnership was not properly registered." (*Id*. at pp. 1007-1008, disapproved in part on another ground in *Ceja v. Rudolph & Sletten, Inc*. (2013) 56 Cal.4th 1113.) Respondent cites *Velez v. Smith* (2006) 142 Cal.App.4th 1154, which held that registration in accordance with state law was a prerequisite to a purported domestic partner's dissolution action. (*Id*. at p. 1169.) As explained in *Domestic Partnership*, the domestic partnership at issue in *Velez v. Smith* was dissolved by one of the partners before the 2003 revisions to the domestic partner laws which added section 297.5 to the Family Code and "marked a sea change in the manner by which rights were extended by law to registered domestic partners." (*Domestic Partnership*, *supra*, at p. 1011; see also *id*. at pp. 1009-1011.)