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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 DAVE MACK, Deceased. _____ LEVEDA JACKSON-JONES, Plaintiff and Appellant, v. TINA McGLORIE, Defendant and Respondent.	B240525 (Los Angeles County Super. Ct. No. BP076086)

APPEAL from an order of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Vicki Marolt Buchanan for Plaintiff and Appellant.

Claire S. Fox and Frank O. Fox for Defendant and Respondent.

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INTRODUCTION

In 2003, the trial court entered an order distributing the estate of Dave Mack to his great niece, Tina McGloire, and his cousin, Henry Hunter, who had served as the estate's administrators. In December of 2011, the decedent's niece, Appellant Leveda Jackson-Jones, filed a motion to vacate the order arguing that McGlorie had intentionally failed to notify numerous legal heirs of the probate proceedings. The trial court denied the motion, concluding that it was untimely. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Distribution of Dave Mack's Estate

On August 19, 2002, Dave Mack died intestate in Los Angeles, California. On October 21, 2002, Mack's great niece, Tina McGlorie, and his cousin, Henry Hunter, filed a petition for letters of administration asserting that the decedent's only surviving relatives were McGlorie, Hunter, William Mack (the decedent's brother), Allie Mack (the decedent's sister), Claudette Motte (the daughter of William) and Doris Emerson (the daughter of Allie). After the court granted the petition, William and Allie Mack assigned their interests in the estate to McGlorie and Hunter.

On August 1, 2003, McGlorie and Hunter filed a petition for final distribution stating that they were the "sole heirs to the estate" and that "all of the other heirs . . . ha[d] assigned their interests to [them.]" The petition requested that the court enter an order distributing the estate, then valued at approximately $700,000, "as follows: [¶] . . . 50% to Tina McGlorie; [¶] . . . 50% to Henry Hunter." The court granted the petition for final distribution on September 24, 2003 and entered an order of final discharge on October 27, 2003.

B. Leveda Jackson-Jones's Motion to Vacate the Orders of Final Distribution and Discharge

1. Summary of Jackson-Jones's motion and supporting declaration

On December 22, 2011, Dave Mack's niece, Leveda Jackson-Jones, filed a motion to vacate the orders of final distribution and discharge. Jackson-Jones asserted that, during the 2003 probate proceedings, McGlorie and Hunter had "deliberately and intentionally failed" to inform the court that the decedent had numerous additional "'heirs at law'" who were "entitled to inherit an intestate share of the decedent's estate." According to Jackson-Jones, the "administrators' failure to give notice was calculated and deliberate and as such it was extrinsic fraud."

In support of her motion, Jackson-Jones filed a declaration asserting that she had obtained a copy of an obituary "evidencing the fact that [McGlorie and Hunter] knew that [Jackson-Jones] and others were the decedent's heirs at law." The obituary stated that it had been "created by Ms. Tina McGlorie and Mr. Henry Hunter" and listed the names of numerous surviving family members and their current place of residence. The obituary identified Jackson-Jones as one of the decedent's ten surviving nieces.

Jackson-Jones's declaration further contended that she was not aware of the probate proceedings until after the estate had been distributed: "I did not learn about the probate proceedings until long after the order for final discharge was signed by the court on October 27, 2003. When I learned that Dave Mack's estate had been probated and the assets distributed to Tina McGlorie and Henry Hunter I was shocked. I attempted to confront Ms. McGlorie regarding this issue and she informed me that I had no right to this estate. I contacted an attorney who advised me that Ms. McGlorie was wrong in her analysis. I then sent a letter to the court advising the court as to what transpired. Ms. McGlorie accused me of defamation and demanded that I pay her thousands of dollars as a result thereof."

Jackson-Jones provided a copy of the letter she sent to the Los Angeles Superior Court, which was written by her sister and signed by several family members who claimed to be legal heirs of the decedent. The letter, dated December 21, 2009, requested

that the court "re-open" the matter to determine whether Mack's assets had been properly distributed: "[T]his case was . . . brought to my attention late last year by [Jackson-Jones and our sister] . . . who, after years of silent ambivalence, finally became suspicious about the validity of Tina and Henry's 'story' which was that: the estate passes to the immediate surviving next of kin . . . This was found to be untrue! [¶] . . . [¶] [A]fter close examination of the California probate codes, the material facts known by my sisters and I[,] . . ., the file obtained from the Court and consultation with several estate attorneys in Los Angeles California, my sisters and I have determined that this case was grossly mishandled and that fraud against other surviving heirs and perjury against the court may have been committed in this case by the parties involved."

Tina McGlorie filed an opposition arguing that the motion was untimely. McGlorie contended that the text of Jackson-Jones's letter demonstrated she had been aware of the alleged fraud since "at least sometime in 2008," and then waited "three or more years prior to [filing the motion.]" McGlorie's opposition was accompanied by a letter in which the trial court informed Jackson-Jones that it could "only decide" the issues she had raised in the letter of December 2009 "after a petition/motion is filed with the court." The court also suggested that Jackson-Jones consider hiring an attorney. The letter was dated January 8, 2010, which was almost two years before Jackson-Jones filed her motion.

In her reply brief, Jackson-Jones argued that she had filed her motion "without unreasonable delay and within . . . three year [sic] from the discovery of the fraudulent orders." The reply brief asserted that Jackson-Jones "learned in 2009 from a family member that the decedent['s] . . . estate was probated and that the probate estate had been closed. Said family member suggested to [Jackson-Jones] that she was probably a legal heir of the decedent and that she probably should have been notified of the probate proceeding." After Jackson-Jones informed the court of these issues in 2009, Tina McGlorie "started a campaign of threats and intimidation . . . in an attempt to . . . scare and harass [family members] to such an extent that [they] would not proceed against [McGlorie] in the Probate Court."

Jackson-Jones filed a second declaration in support of the reply brief reiterating that she "did not actually discover that Tina McGloire had probated the estate until approximately 2009 when [she] received a copy of the order of final distribution from a family member and started to investigate the situation." The declaration further stated that, after sending the letter to the court in 2009, Jackson-Jones received threatening letters and voicemails that dissuaded her from "proceed[ing] against Tina in the probate court." Jackson-Jones only decided to pursue the case in August of 2011, when her "legal counsel advised [her] that" that she was in fact an heir at law and that "Tina's threats were without merit." The declaration was accompanied by four letters that McGloire sent to Jackson-Jones between October 22, 2010 and January 19, 2011. Each letter accused Jackson-Jones of committing slander and defamation and demanded that she pay $7,500 in damages.

C. Trial Court's Denial of the Motion to Vacate

At the hearing, the court informed the parties that although it believed Jackson-Jones had demonstrated McGlorie committed extrinsic fraud, it was concerned about the timeliness of the motion: "I think that Ms. McGlorie and Mr. Hunter just decided that they were going to figure out who was entitled to get the property of the estate. So . . . . I think it's clear that there's extrinsic fraud. And if that were the end of the inquiry, I think we'd be done, and I'd set aside the order. . . . [But] I am disturbed about how long it took [Jackson-Jones] to get into court."

The court explained that Jackson-Jones's letter to the trial court suggested she was aware of the fraud in 2008, which was three years before she filed her motion. The court also questioned whether Jackson-Jones delay in filing was actually caused by McGlorie's threatening letters: "[I]t's not entirely clear to me why the first, quote, unquote, 'intimidation' from Ms. McGlorie was ten months after [Jackson-Jones] wrote to the court. . . . See, I feel like the letters that you're relying on about Ms. McGlorie, her not very nice letters, are sort of an after the fact justification for why it took two years to get into court. Because [Jackson-Jones] sent the letter [to the court] in December [of 2009].

She learns about the fraud in late 2008, consults with attorneys in December of 2009. We know she knows about the fraud. I'm not sure when she learned about it in 2008. She sends the letter in 2009 and . . . Ms. McGlorie's letter didn't come until October [of 2010]. So I'm not sure where the threat was or what the evidence of threat is."

In response, Jackson-Jones's attorney argued that two factors caused her to delay the filing of the motion to vacate. First, the attorney argued that, after obtaining a copy of the letter sent to the trial court in December of 2009, McGlorie "threatened everybody who could come after her and . . . was very successful in intimidating them and scaring them into not doing anything." The attorney alleged that, in addition to sending threatening letters, McGlorie had made several "phone calls. . . . all in line with what the letters say." The attorney also argued that the delay was caused by inaccurate advice Jackson-Jones had received from two other attorneys, each of whom told her she "did not really have a right as an heir at law."

Jackson-Jones testified at the hearing and affirmed her attorney's statements, explaining that she had contacted several attorneys who delayed in responding to her and then declined to take the case. Jackson-Jones also stated that she was "frightened" by McGlorie's threats until she met with her current attorney in August of 2011, who informed her that she was "within [her] rights." During her testimony, Jackson-Jones admitted that she was aware McGlorie was "probating" the estate in 2003. At that time, however, McGloire told Jackson-Jones and her sisters that they would not "receive anything because [their] mother was deceased."

Although the court acknowledged it was "offended by Ms. McGlorie['s]" conduct, it reiterated its concerns about the timing of the motion: "I am very disturbed that when you think about the policy of the law and about finality of judgments that somebody learns about it in late 2008 and sits around for a year and finally writes a letter and then it takes two more years to even get into court, it's very troubling in terms of that reasonable spectrum."

On March 5, 2012, the court issued a written order ruling that Jackson-Jones had "not brought her motion to vacate within a reasonable period of time," explaining: "The

evidence . . . established that for 'years', Ms. Jackson-Jones (as well as others) had questions about the manner in which the estate was distributed. . . . The same evidence establishes that at some point between late 2008 and December 21, 2009, Ms. Jackson-Jones had access to the 'file obtained from the court' and had consulted with 'several estate attorneys.' Despite the long-standing concerns and information before Ms. Jackson Jones, she waited an additional two to three years before filing any action in court."

The court also noted that, during the hearing, Jackson-Jones "admitted that she was aware of the probate proceedings concerning Dave Mack when they were pending back in 2003." According to the court, this testimony showed that "Jackson Jones' statement contained in the declaration filed with her moving papers that she 'did not learn about the probate proceeding until long after the order for final discharge was signed by the court on October 27, 2003' is not accurate." Jackson-Jones filed a timely appeal.

DISCUSSION

A. Summary of Applicable Law and Standard of Review

"[W]here relief is no longer available under statutory provisions, a trial court generally retains the inherent power to vacate a . . . judgment or order on equitable grounds where a party establishes that the judgment or order . . . resulted from extrinsic fraud or mistake.[1] [Citation.] Extrinsic fraud occurs when a party is deprived of the opportunity to present a claim or defense to the court as a result of being kept in ignorance or in some other manner being fraudulently prevented by the opposing party from fully participating in the proceeding." (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228-1229 (*Gorham*); see also 8 Witkin, Cal. Proc. (5th ed. 2008) Attack, § 215, p. 823 [where judgment is "obtained under circumstances of extrinsic

1 The plaintiffs do not contend they were entitled to relief under any statutory provision; they argue only that the trial court should have vacated the judgment pursuant to its equitable authority.

fraud, . . . equitable relief is allowed after the time for appeal, new trial, or other statutory means of review has expired"].)

"To qualify for equitable relief on the ground of extrinsic fraud or mistake, the moving party must demonstrate diligence in seeking to set aside the [judgment] once it was discovered." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 49 (*Manson*).) It is "well-settled" (*Cowan v. Cowan* (1946) 72 Cal.App.2d 868, 871 (*Cowan*)) that the motion "can only be entertained when made within a reasonable time, the determination of which is wholly within the court's discretion." (*Davis v. Davis* (1960) 185 Cal.App.2d 788, 792.) Moreover, "[b]ecause of the strong public policy in favor of the finality of judgments, equitable relief from a . . . judgment or order, is available only in exceptional circumstances. [Citation.]" (*Gorham, supra,* 186 Cal.App.4th at pp. 1229-1230.)

"We review the court's denial of a motion for equitable relief to vacate a . . . judgment or order for an abuse of discretion." (*Gorham, supra,* 186 Cal.App.4th at p. 1230.) "An abuse of discretion occurs 'where, considering all the relevant circumstances, the court has exceeded the bounds of reason or it can fairly be said that no judge would reasonably make the same order under the same circumstances.' [Citation.]" (*In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 7.) Our review of the court's factual findings "is limited to whether any substantial evidence, contradicted or uncontradicted, supports the trial court's ruling. We resolve conflicts in evidence in favor of the prevailing party and draw all reasonable inferences to uphold the trial court's decision." (*Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 300.) "If the ruling is based on an inference that reasonably could be made from the facts, the existence of other reasonable inferences does not give us authority to substitute our decision for that of the trial court." (*In re Andrew J.* (2013) 213 Cal.App.4th 678, 692 (*Andrew J.*).)

B. The Trial Court Did Not Abuse its Discretion in Concluding that the Motion Was Not Brought Within a Reasonable Time

The trial court, while rightfully troubled by the highly improper conduct of McGlorie and Hunter, nonetheless concluded that the motion was untimely because the evidence showed Jackson-Jones discovered the fraud at least three years prior to filing her action. The court further concluded that that Jackson-Jones did not have an adequate excuse for this three year delay. The court's ruling is supported by substantial evidence and did not exceed the bounds of reason.

First, substantial evidence supports the court's finding that Jackson-Jones learned of the alleged fraud at least three years before filing her motion. The letter Jackson-Jones and her sisters sent to the trial court, which was dated December 21, 2009, states that she notified her family members about the fraud approximately one year before the letter was written. The motion, however, was not filed until December of 2011. The letter also contains language implying that Jackson-Jones had concerns about the estate even before 2008, alleging that she only reached out to her family after "years of silent ambivalence."

Substantial evidence also supports the trial court's finding that Jackson-Jones did not provide an adequate excuse for the three year delay. In her moving papers and at the hearing, Jackson-Jones provided two reasons as to why the motion was not filed until December of 2011. First, she said that McGloire's threats dissuaded her from bringing suit until an attorney assured her she had valid claims and defenses. Second, she claimed that several attorneys had informed her that she did not have a case or that they were unwilling to bring the case.

The court reasonably concluded that these assertions were contradicted by the evidence. In regards to McGloire's threatening conduct, the first letter McGloire sent to Jackson-Jones was dated October 10, 2010, which was approximately two years after Jackson-Jones became aware of the alleged fraud and ten months after she sent a letter to

the trial court regarding the fraud. Therefore, based on the record in the evidence, McGlorie's threatening conduct began long after the fraud was discovered.[2]

The evidence also casts doubt on Jackson-Jones's claim that her concerns about McGloire's threats were abated only in August of 2011, when her current attorney advised her that she did in fact have a valid claim to the estate. In the December 2009 letter to the court, Jackson-Jones and her sisters represented that they had already met with "several estate attorneys" and determined that they had "an interest in the estate." In addition, Jackson-Jones's declaration states that, before sending the letter to the court in 2009, "an attorney . . . advised [her] that Ms. McGlorie was wrong in her analysis" regarding the proper distribution of the estate. These materials demonstrate that Jackson-Jones had been informed by counsel that she had a valid claim to the estate before McGlorie engaged in any threatening conduct.

The letter to the court and Jackson-Jones's declaration also support the court's finding that her delay was not caused by inaccurate advice from counsel. At the hearing, Jackson-Jones's attorney argued that she did not know who "to write [to]" and that other attorneys misinformed her that she did not "have a right as an heir at law." Jackson-Jones's declaration and the letter to the court, however, allege that she contacted attorneys in 2009 and was advised that she qualified as an heir at law.

The record also contains evidence that raises general questions as to Jackson-Jones's credibility. Jackson-Jones provided a sworn declaration in support of the motion stating that she "did not learn about the probate proceedings until long after the order for final discharge was signed by the court on October 27, 2003." In a second sworn declaration, she reiterated this assertion, stating that she "did not actually discover that Tina McGloire had probated the estate until approximately 2009." At the hearing, however, she admitted that she was aware of the probate proceedings in 2003.

In light of the evidence supporting the trial court's conclusions that (1) Jackson-Jones delayed three years in bringing her motion, and (2) she failed to establish a valid

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2 Although Jackson-Jones also claimed that McGlorie left her threatening voice mails, the record does not contain any evidence indicating when those calls occurred.

reason for the delay, we cannot say that the court abused its discretion in ruling that the motion was untimely.

Jackson-Jones, however, contends that the trial court abused its discretion because its "ruling rests on the flawed premise" that she had a duty to investigate "Tina McGlorie's [fraudulent] actions" in 2003. The trial court's ruling, however, was not predicated on Jackson-Jones's failure to discover the fraud in 2003; rather, it was predicated on her failure to file the motion until three years after discovering the fraud. As the court explained at the hearing: "when you think about the policy of the law and about finality of judgments that somebody learns about it in late 2008 and sits around for a year and finally writes a letter and then it takes two more years to even get into court, it's very troubling in terms of that reasonable spectrum." Similar statements appear in the court's order, which states that, after discovering the fraud, Jackson-Jones "waited . . . two to three years before filing any action in court."

Jackson-Jones also argues that it was an abuse of discretion to conclude that a "two to three year" delay was unreasonable because "this is the same amount of time the court found to be reasonable in *Manson* [, *supra*, 176 Cal.App.4th 36]." The defendant in *Manson*, Paula Black, discovered that a default judgment had been entered against her and then waited three years before filing a motion to void the judgment. The trial court ruled that the motion was brought within a reasonable time and the appellate court affirmed, explaining: "The [trial] court noted Black . . . consulted two attorneys [after discovering the default judgment], but received inaccurate advice that there was nothing she could do. She brought her motion to set aside the judgment in 2008, after [plaintiff] attempted to obtain an order for the sale of her residence and she learned from her own legal research that a motion to set aside the judgment was an available remedy. Implicitly, the [trial] court found Black acted diligently, in light of the discouraging legal advice she received. [¶] We find no abuse of discretion in the trial court's grant of equitable relief." (*Id*. at p. 49.)

Manson merely held that, based on the trial court's factual findings regarding the cause of the delay, it did not abuse its discretion in concluding that Black had acted

diligently in pursuing her claims. The appellate court did not hold that it would have been an abuse of discretion to conclude otherwise. Nor did it hold that a three year delay is *per se* reasonable. Indeed, other decisions have recognized that, depending on the particular circumstances of the case, even a one year delay may be unreasonable. (See, e.g., *Cowan, supra*, 72 Cal.App.2d 868 [one-year delay in filing suit was unreasonable where defendant failed to provide any reason for the delay].)

Jackson-Jones also overlooks a critical factual distinction between *Manson* and this case. The trial court in *Manson* found that plaintiff's three year delay was in fact caused by inaccurate legal advice she received from multiple attorneys. Here, however, the trial court found that the evidence did not support Jackson-Jones's assertion that her delay was the product of inaccurate legal advice. As discussed above, this factual finding is supported by substantial evidence. Accordingly, *Manson* has little relevance to this case.

Although not explicitly stated, the pervading theme of Jackson-Jones's brief is that the evidence in the trial court raised a reasonable inference that she acted diligently in pursuing her motion. This argument, however, ignores the narrow scope of our review. Under the abuse of discretion standard, "[i]f the ruling is based on an inference that reasonably could be made from the facts, the existence of other reasonable inferences does not give us authority to substitute our decision for that of the trial court." (*Andrew J., supra,* 213 Cal.App.4th at p. 692.) It is therefore irrelevant whether the court could have reasonably concluded that Jackson-Jones acted diligently. The issue, rather, is whether the court's finding that she failed to do so was '"so irrational or arbitrary that no reasonable person could agree with it."' [Citation.]" (*Garrett v. Howmedica Osteonics Corporation* (2013) 214 Cal.App.4th 173, 187.) Jackson-Jones has failed to make such a showing.

DISPOSITION

The trial court's order is affirmed. Respondents are awarded their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.