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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DORIAN CARTER,

Plaintiff and Appellant,

v.

TRACY SHEEN, et al.,

Defendants and Respondents.

B254019

(Los Angeles County
Super. Ct. No. BC458090)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Law Offices of Amy P. Lee and Amy P. Lee for Plaintiff and Appellant.

Law Offices of Paul R. Hammons and Paul R. Hammons for Respondent Tracy Sheen.

Law Offices of Nina R. Ringgold and Nina R. Ringgold for Respondent Nathalee Evans.

Dorian Carter, disinherited daughter of decedent Eugenia Ringgold, appeals from the dismissal of her complaint against the trustee of Ringgold's trust. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Eugenia Ringgold created a will and trust before her 2006 death.¹ After Ringgold's death, Tracy Sheen, who had been designated as trustee in an interlineation to the trust document, petitioned to be confirmed as trustee. Nathalee Evans challenged the petition and sought to be appointed trustee herself. Sheen was confirmed as trustee, and this court affirmed Sheen's confirmation. (*Evans v. Sheen* (Mar. 2, 2010, B196909, B201949, B202637, B209064) [nonpub. opn.].) Evans then petitioned for Ringgold's will to be admitted to probate and to be named executor. (*Evans v. McCullough* (Nov. 14, 2012, B232397) [nonpub. opn.], at p. 2.) The probate court declined to name Evans as the executor and appointed Thomas McCullough, Jr. as special administrator. (*Id.* at pp. 2-3.) Evans appealed, and we affirmed the court's orders. (*Id.* at p. 9.)

Carter then sought unsuccessfully to oust McCullough as special administrator and to have him sanctioned, and to obtain possession of Ringgold's records. (*Estate of Ringgold* (May 21, 2013, B235032) [nonpub. opn.].) We dismissed Carter's appeal for lack of standing because Carter is a surviving but disinherited daughter with no interest in her mother's estate. (*Id.* at pp. 3-5.) As we noted in our opinion, Ringgold's will has been finally determined to be a pour-over will conveying the assets of her estate to her trust. (*Id.* at pp. 2-3.) Ringgold's trust document expressly excluded Carter as a beneficiary. (*Id.* at p. 3.) Carter did not challenge the validity of the will and she

¹ Ringgold's estate has been the subject of extensive litigation. On our own motion, we take judicial notice of several of our prior opinions in related proceedings, specifically the opinions in *Evans v. Sheen* (Mar. 2, 2010, B196909, B201949, B202637, B209064) [nonpub. opn.]; *Evans v. McCullough* (Nov. 14, 2012, B232397) [nonpub. opn.]; and *Estate of Ringgold* (May 21, 2013, B235032) [nonpub. opn.]. (Evid. Code, § 451, subd. (a).)

acknowledged that she was specifically disinherited under the trust. (*Id.* at p. 4.) Accordingly, as a disinherited daughter, Carter lacked standing to challenge the administration of her mother’s estate. (*Id.* at pp. 3-5.)

Carter filed this civil suit in March 2011. Carter asserted 14 causes of action against Sheen, individually and “as purported trustee” of the Ringgold Trust. Two of these causes of action (quiet title and equitable relief) were also asserted against Evans “as claimant to the status of trustee” to the Ringgold Trust. The gravamen of the complaint was that Sheen is not the true trustee of the Ringgold Trust; that a residence on Bedford Drive in Beverly Hills is not a trust asset; and that Sheen has engaged in various forms of misconduct in the course of becoming trustee and exercising power over the trust, including in her unlawful detainer action seeking to evict Carter from the Bedford Drive residence. Carter acknowledged in the complaint that her mother’s trust instrument “indicates that plaintiff is disinherited.”

Sheen moved for judgment on the pleadings on Carter’s complaint. The court granted the motion for judgment on the pleadings and subsequently entered a partial judgment of dismissal as to Carter’s complaint;² proceedings appear to have continued with respect to a first amended cross-complaint filed by Evans against Sheen. Carter appeals the judgment.

DISCUSSION

“The standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer: We treat the pleadings as admitting all of the material facts properly pleaded, but not any contentions, deductions or conclusions of fact or law contained therein. We may also consider matters subject to judicial notice. We review

² Because the court entered a partial judgment of dismissal and the cross-complaint remained pending, we requested briefing from the parties as to whether there had been a final judgment for purposes of appeal. As the dismissal resolves the issues between Carter and Sheen, we conclude that the partial judgment of dismissal is appealable. (*Wilson v. Sharp* (1954) 42 Cal.2d 675, 677; *First Security Bank of California, N.A. v. Paquet* (2002) 98 Cal.App.4th 468, 473.)

the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any theory.” (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1298.)

The trial court granted the motion for judgment on the pleadings on two grounds: first, that the probate court, rather than the civil court, had jurisdiction over the action; and second, that Carter, as a disinherited daughter, lacked standing to sue. We affirm the judgment on standing grounds.

I. Issues Pertaining to Judicial Notice

A. Trial Court Rulings

In conjunction with the motion for judgment on the pleadings, the trial court took judicial notice of a series of documents submitted by Sheen. On appeal, Carter devotes more than 10 pages of briefing to her argument that the trial court should not have taken judicial notice of various documents pertaining to the extensive litigation history concerning the Ringgold estate. The trial court properly took judicial notice of a prior statement of decision and judgment and of an earlier appellate opinion in the litigation over Ringgold’s trust (Evid. Code, §§ 451, 452), and there is no indication in the record that the court’s use of these documents exceeded the proper scope of judicial notice. (See, e.g., *Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1050-1051.) As for the declaration of service filed in one of the earlier actions, this document does not pertain to the grounds of standing and jurisdiction on which the trial court based its decision but to an issue of notice of prior proceedings. Therefore, any error in taking judicial notice of this document was harmless. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1778 [error in taking judicial notice reviewed for harmlessness].)

Finally, the court took judicial notice of a trust transfer deed that stated that Ringgold transferred the Bedford Drive property to her trust in 1997. Even if the trial court erred in taking judicial notice of this document, any error was harmless because the

question of whether the Bedford Drive property was an asset of Ringgold's trust has already been litigated and the property determined by the probate court to be a trust asset. That judgment was affirmed by this court in Case No. B209064 and is now final. (*Evans v. Sheen* (Mar. 2, 2010, B196909, B201949, B202637, B209064) [nonpub. opn.]])

B. Request for Judicial Notice/Motion to Augment

Carter requests that this court judicially notice and augment the record with eight different documents. We augment the record to include Document No. 4, the partial judgment of dismissal in this action entered September 24, 2014. We take judicial notice of the attorney disqualification orders from Los Angeles Superior Court Case No. BP098270. (Evid. Code, § 451, subd. (a).)

Because they do not pertain to issues presented by this appeal, we decline to take judicial notice of or to augment the record with Document Nos. 2 and 3, which are a notice of removal of this case to federal court and a reply brief filed in federal court in an appeal of the district court's order remanding the matter to state court. We also decline to take judicial notice of or to augment the record with Document Nos. 5 through 8, which are copies of court filings in this action that are already included in the clerk's transcript. As resolution of the alleged discrepancies between Carter's documents and the documents in the clerk's transcript is neither necessary nor useful to our determination of the issues presented in the case, we need not take judicial notice of these documents.

C. Request to Strike

Evans requests that this court strike Exhibit A to Sheen's respondent's brief, a copy of this court's unpublished decision in *Estate of Ringgold* (May 21, 2013, B235032), because it was attached to the respondent's brief without a request for judicial notice. As we have taken judicial notice of this opinion from a related case on our own motion, this request is moot.

II. Jurisdiction

The trial court concluded that it lacked jurisdiction to hear this action, holding that “the probate court has continuing jurisdiction of the matter as it was the first to acquire jurisdiction over the matter. See Saks v. Damon Raike & Co. (1992) 7 Cal.Ap[p].4th 419, 429-[4]30.” In *Saks*, the Court of Appeal held that a civil action filed in the superior court by beneficiaries of a trust fell within the exclusive jurisdiction of the probate court because Probate Code section 17000, subdivision (a) allocates exclusive jurisdiction of proceedings concerning the internal affairs of trusts to the probate court. (*Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, 429-430.) This portion of the *Saks* decision, however, has been criticized. In *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333, the Court of Appeal analyzed the history of probate court jurisdiction and the import of Probate Code section 17000, concluding that California had long followed the principle that “even in a county having a formal probate department, a nonprobate department does not lack fundamental jurisdiction over a probate matter.” (*Id.* at p. 1344.) Section 17000 did not change existing law in that regard; instead, it was meant to ensure that the probate department of the superior court could exercise the full jurisdiction of the superior court when hearing and deciding a probate matter. (*Id.* at p. 1345.) Accordingly, the *Harnedy* court concluded, the jurisdiction contemplated by section 17000 “is not the sort of fundamental jurisdiction, i.e., implicating the competency or inherent authority of the court, the lack of which would render a judgment void.” (*Ibid.*) We find the *Harnedy* opinion persuasive and well-reasoned, and we therefore adopt that court’s interpretation of section 17000. While it would have been more efficient if this action had been brought in the probate department, the fact that other proceedings relating to the trust had been heard by the probate department of the Los Angeles Superior Court did not deprive the trial court of fundamental jurisdiction to hear this matter.

III. Standing

Carter lacks standing to sue to vacate judgments relating to the trust and its provisions, to attempt to secure ownership for herself of trust property, and to assert torts against the trustee relating to Ringgold's estate and estate planning. Carter acknowledged in her complaint in this action that her mother's trust instrument indicates that she is disinherited. As we previously held in *Estate of Ringgold* (May 21, 2013, B235032) [nonpub. opn.] when Carter sought to challenge the administration of her mother's will, Carter has no interest in her mother's estate because she was disinherited, and she cannot demonstrate that she has been aggrieved by the handling of an estate of which she is not an heir. (*Estate of Thor* (1935) 11 Cal.App.2d 37, 37-38 [disinherited husband is a stranger to estate and has no right to appeal orders made in probate proceedings].) Carter claims that *Estate of Thor* is inapposite because it considers the position of a former spouse, who has no current or future interests in the other former spouse's estate, but we find the case applicable here because Carter, like the former spouse in *Estate of Thor*, lacks any current or future interest in Eugenia Ringgold's estate.

We note that although the primary thrust of the complaint concerns Carter's grievances about her mother's estate plan, the complaint contains scattered references to Carter also being entitled to inherit from the estate of her grandmother. None of these passages include an allegation that Carter is the direct heir of her grandmother or any statement of the mechanism by which Carter claims to be entitled to inherit from her grandmother's estate. Instead, the allegations concerning Carter's grandmother's estate mention her grandmother in conjunction with Carter's mother and the Ringgold estate and are intertwined with her position that she is her mother's sole heir. For instance, in paragraphs 88 and 93 of the complaint, Carter alleges interference with her economic relationship "in the estate planning documents of plaintiff and her mother and grandmother and as provided by law as the sole heir of plaintiff's mother." Because Carter did not plead a claim to be a direct beneficiary of her grandmother's estate and she has been disinherited by her mother, thus extinguishing any interest in her grandmother's

estate by means of inheriting through her mother's estate, Carter has not established any error in the court's ruling that she lacked standing to bring this action.

IV. Leave to Amend

Carter contends that the trial court erred when it granted the motion for judgment on the pleadings without giving her leave to amend her complaint. "Whether a motion for judgment on the pleadings should be granted with or without leave to amend depends on 'whether there is a reasonable possibility that the defect can be cured by amendment. . . .' [Citation.] When a cure is a reasonable possibility, the trial court abuses its discretion by not granting leave to amend and a reviewing court must reverse. [Citation.] 'The burden of proving such reasonable possibility is squarely on the plaintiff.'" [Citation.]" (*Mendoza v. Rast Produce Co., Inc.* (2006) 140 Cal.App.4th 1395, 1402.)

Although in her briefing Carter summarily set forth several respects in which she could amend her complaint, neither in this court or in the trial court did she identify any way that she could overcome the fundamental problem of standing, nor did she state any facts to support any colorable legal theory by which she could stand to inherit from her mother's or her grandmother's estate. Moreover, at oral argument, Carter's counsel was unable to identify any specific facts that she could plead that would establish that she was her grandmother's heir at law. The trial court did not abuse its discretion in denying Carter leave to amend her complaint, and Carter has not demonstrated in this court any reasonable possibility that she could cure the defects in her complaint through amendment.

DISPOSITION

The judgment is affirmed. Respondent Sheen shall recover her costs on appeal.
Respondent Evans shall bear her own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.