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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

E. SCOTT DOUGLAS et al., Plaintiffs and Respondents, v. DEREK B. DOUGLAS, Defendant and Appellant.	B260674 (Los Angeles County Super. Ct. No. YP010736)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel Murphy, Judge. Affirmed.

Broedlow Lewis, Jeffrey Lewis and Kelly Broedlow Dunagan for Defendant and Appellant.

Robert D. Feighner; Hitchcock, Bowman & Schachter, Robert Schachter; and E. Scott Douglas for Plaintiffs and Respondents Randall B. Douglas and E. Scott Douglas.

Law Offices of Steven F. Carvel, Steven F. Carvel and Jonathan J. Udewitz for Respondent Rita D. Michael, as Trustee, etc.

Eva Maria and Riley Douglas created the Douglas Family Trust (the Trust) to benefit their four sons Derek, Randall, E. Scott (Scott) and Garret.[1] After Riley died, Eva Maria amended the Trust to give Derek a Trust asset known as the Paramount property, but only if he disclaimed all other Trust assets. She also took out loans for Derek's benefit against a Trust asset. After Eva Maria died, litigation ensued between Derek and his three brothers about the amendment and loans. That litigation included a prior appeal to this court, *Douglas v. Douglas* (Aug. 8, 2013, B236217) [nonpub. opn.] (*Douglas I*), which found that Derek executed a valid disclaimer as of December 21, 2011, entitling him to the Paramount property and all of its rental income from that day forward. *Douglas I* also held that Derek had to repay the loans to the Trust.

At issue in this latest appeal, brought by Derek as appellant against Randall and Scott as respondents,[2] is the probate court's judgment that Derek is not entitled to any rental income from the Paramount property prior to the December 21, 2011 disclaimer and allocating to Derek various expenses, including ones relating to the Paramount property and the loans. We affirm the judgment.

BACKGROUND

I. The Trust and Eva Maria's amendments

Eva Maria and Riley created the Trust. It provided that upon the surviving spouse's death, Trust assets would be divided equally between their four sons: Derek, Scott, Randall and Garret. After Riley died in 2002, Trust assets were divided into the Survivor's Trust and the Exemption Trust. The Survivor's Trust's assets included industrial property in Paramount (the Paramount property), which generated $20,000 monthly rental income. An asset of the irrevocable Exemption Trust was Eva Maria's and Riley's home at 449 29th Street, Manhattan Beach (the Residence), which was free and clear of all liens at Riley's death.

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[1] For clarity, we refer to family members by their first names. (*Moore v. Shaw* (2004) 116 Cal.App.4th 182, 186, fn. 2.)

[2] Garret has not filed a respondent's brief.

After Riley's death, Derek became his mother's adviser. Eva Maria then twice amended the Trust. Her first amendment designated Derek to act as successor trustee upon her death. Her second amendment gave Derek the Paramount property, *if* he disclaimed all other assets in the Survivor's and Exemption Trusts (the Second Amendment). Eva Maria also took other actions to benefit Derek, namely, she used the Residence as security for loans totaling approximately $875,000 as follows: (1) an approximately $440,000 loan, used to buy rental property in Manhattan Beach (the Rental Property); (2) a $250,000 loan, used to improve the Paramount property; and (3) a $250,000 home equity line of credit (HELOC), used to establish an account for Derek's day trading.[3]

Eva Maria died on August 16, 2009. Derek briefly served as successor trustee before being replaced. Litigation ensued between the brothers.

II. The earlier probate court proceedings

Randall, Scott and Garret filed a petition challenging Eva Maria's amendments to the Trust and the loans. The probate court, in June 2011, found that Derek did not procure the amendments by undue influence and breach of fiduciary duty. But the court ordered Derek to repay $250,000 plus interest (the HELOC loan) and $200,000 plus interest (an amount used to improve the Paramount property) to the Exemption Trust.

Two weeks after this decision, Derek, on July 14, 2011, executed a qualified or conditional disclaimer, disclaiming his interest in assets held in the Survivor's and Exemption Trusts but purporting to retain his interest in the Rental Property.[4] Randall and Scott challenged the qualified disclaimer via another petition. On December 21,

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[3] Eva Maria designated Derek as beneficiary of the account, and on her death, the money was transferred to Derek.

[4] Derek also filed a petition seeking a determination that he owned all the proceeds from the sale of the Rental Property. Because Derek had executed the disclaimer, the probate court, on January 13, 2012, found "pursuant to the terms of the trust, all remaining assets are to be distributed in equal shares to" Randall, Scott and Garret. The court also denied Derek's claim to the Rental Property.

2011, the court interlineated the offending exclusionary language and found the interlineated disclaimer to be valid as of July 14, 2011. The court also found that Derek was entitled to rental income from the Paramount property from July 14, 2011 forward, but rental income prior to that date "shall be considered an asset of the" Trust. These conclusions were set forth in orders dated March 7, 2012.

Based on Derek's disclaimer, the Paramount property was deeded to Derek in May 2012.

III. *Douglas I*

Derek appealed the probate court's orders. Scott and Randall cross-appealed. In *Douglas I*, we found that the Trust precluded Eva Maria from encumbering the Residence, which was an Exemption Trust asset. We also found there was substantial evidence Derek knowingly benefited from Eva Maria's breach of trust. (*Douglas I*, *supra*, B236217, at [p. 12].) We therefore upheld the probate court's orders requiring Derek to repay $450,000 to the Exemption Trust, although we struck the prejudgment interest award against Derek because there was "no legal basis" for it.

We also found that Derek's disclaimer was valid from the date it was interlineated (December 21, 2011) and not from the date he executed the qualified disclaimer (July 14, 2011). We said, "Derek executed a valid disclaimer on December 21, 2011. Until that date, Derek had no right to all of the Paramount property rental income. Thus, the court erred in awarding Derek Paramount property rental income from July 14, 2011 forward."

IV. The Allocation Order

On October 9, 2012, the probate court issued the Allocation Order. The Trust's remaining assets were again ordered distributed equally to Randall, Scott and Garret, subject to a $200,000 reserve to cover administrative expenses and costs. The court also ordered: "Administrative costs and fees of the entire distribution over the history of the trust among all the beneficiaries are to be allocated by the trustee on a percentage basis based on the quarterly value of the assets to be distributed." Derek appealed from the

Allocation Order, but we dismissed the appeal after Derek failed to file an opening brief. The remittitur issued on January 13, 2014.

V. The most recent probate court proceedings

In December 2013, Derek filed a petition for, among other things, rental income from the Residence, for extinguishment of a $1 million lien on the Paramount property in the Trust's favor, and for a fair and equitable allocation of Trust expenses. Scott and Randall filed petitions for an order instructing the trustee regarding allocation of administrative fees, expenses and taxes since December 21, 2011 and to assess fees and costs against Derek's share of Trust assets.

Thereafter, the trustee filed her first account. Based on her interpretation of the Allocation Order, the trustee allocated expenses based on each beneficiary's ultimate distributive share in each quarter. From the third quarter of 2009 to the first quarter of 2012, for example, the Paramount property was still a Trust asset. Because the Paramount property was ultimately distributed to Derek and because that property represented approximately 50 percent of Trust assets, Derek's percentage of total assets based on his ultimate distributive share, and hence liability for expenses, ranged from 43 percent to 53 percent for that period. His percentage of total assets dropped to 4 percent in the second quarter of 2012, when the Paramount property was no longer a Trust asset because it became Derek's sole property. Based on these percentages, Derek's share of expenses totaled $396,386.82 and his brothers' share (as a unit) totaled $364,307.42.

The matter went to trial on the petitions, and the probate court, on November 24, 2014, issued its judgment, which resolved outstanding issues concerning how expenses and assets would be allocated.

Administrative fees and costs

The court upheld the trustee's determination that administrative fees and costs include attorney fees, trustee fees, CPA fees, income taxes, and mortgage interest for trust assets. The pro-rata share allocation of the fees and costs was consistent with the Allocation Order.

Paramount property rental income

The court found that Derek was not entitled to rent from the Paramount property before December 21, 2011, the effective date of his disclaimer. Until that day, "the rental income of the Paramount property was part of the" Trust. It was in "Derek's sole purview to make his election/disclaimer at any time," but he chose not to exercise it in March 2008, when Eva Maria amended the Trust. Had Derek exercised the election then, he would have owned the Paramount property and its rental income from that time forward. But under Probate Code sections 16340 and 16341,[5] residuary legatees of estates are to receive net income earned during the period of administration on the basis of their proportionate interest in the undistributed assets when distributions are made. Eva Maria's Second Amendment "provides that Derek had the election of taking solely the Paramount property or not taking the Paramount property and sharing in a four-(4) way split of all estate assets. Derek cannot have the Paramount property and also income held by the Trust for the residuary beneficiaries."

Interest payments on loans

The court upheld the trustee's allocation to Derek of 100 percent of interest payments the Trust made as a result of the loans Eva Maria took out for his benefit.

Allocation of trustee and attorney fees after the disclaimer

The court found that some of Derek's actions were in good faith, but "it was apparent to the court that many of Derek's actions were for the sole purpose of delaying distribution of the Trust assets to his brothers . . . causing [them] to incur unnecessary expenses and fees." The court cited Derek's abandoned appeal, which Derek initiated in December 2012 and was dismissed in November 2013 due to his failure to file an opening brief. Under its equitable powers, the court therefore allocated to Derek 60

[5] All further statutory references are to the Probate Code unless otherwise indicated.

percent of trustee fees and trust attorney fees incurred from May 12, 2012 (the date the Paramount property was transferred to Derek) to the close of the Trust administration.[6]

Lien on the Paramount property

The court reduced the $1 million lien on the Paramount property to $500,000.

CONTENTIONS

Derek contends **I.** the probate court erred by allocating to him approximately 50 percent of Trust expenses under the Allocation Order, **II.** he is entitled to rental income from the Paramount property from Eva Maria's death to December 21, 2011, **III.** allocating expenses and interest the Trust incurred with respect to the loans he was ordered to repay circumvents *Douglas I*, and **IV.** the $500,000 lien against the Paramount property should be extinguished.

DISCUSSION

I. The Allocation Order

The probate court approved the trustee's allocation of approximately 50 percent of the Trust's expenses to Derek from the time of Eva Maria's death to when the Paramount property was deeded to Derek. He contends he should bear either none of the expenses or, at most, only 25 percent of them. We disagree.

Although Derek argues that the probate court's decision is an "end-run" around *Douglas I*, it is Derek who seeks to avoid the consequences of prior orders. The probate court issued the Allocation Order in October 2012. It provided, "Administrative costs and fees of the entire distribution over the history of the trust among all the beneficiaries are to be allocated by the trustee on a percentage basis based on the quarterly value of the assets to be distributed." That order was appealable, and Derek appealed from it. (See generally Code Civ. Proc., § 904.1, subd. (a)(1)); §§ 1300, 1304, 17200.) After Derek failed to file his opening brief, we dismissed the appeal. The remittitur issued in January 2014. The Allocation Order is therefore final. Because it is final, Derek is precluded

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[6] Derek does not challenge this bad faith finding and allocation of the majority of trustee and trust attorney fees.

from relitigating how administrative costs and fees should be allocated between him and the residuary beneficiaries. (See generally *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 ["*Issue preclusion* prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action."].)

Derek responds he is not "challenging the content of [the] Allocation Order," but rather "how the Trustee has applied the probate court's October 2012 directive to allocate expenses based on the quarterly value of the assets to be distributed." We fail to see the distinction. The trustee interpreted the Allocation Order as a directive to allocate expenses based on each beneficiary's ultimate distributive share in each quarter. From the third quarter of 2009 to the first quarter of 2012, for example, Derek's share of expenses was approximately 50 percent, because approximately 50 percent of the Trust's assets (namely, the Paramount property) were ultimately distributed to him. Thereafter, his share of Trust expenses declined dramatically, to 4 percent, because the Paramount property was no longer a Trust asset.[7] Derek, however, expected he would be responsible either for 25 percent of Trust expenses from the time of Eva Maria's death to the effective date of his disclaimer or for no Trust expenses during that period. But if there was an alternative interpretation of the Allocation Order, or if, as Derek claims, the Allocation Order was ambiguous, then those issues could have, and should have, been raised in Derek's abandoned appeal. Indeed, we presume that the ambiguity Derek now claims is apparent in the Allocation Order is a reason he appealed from it in 2012.

But, to the extent Derek may challenge how expenses were allocated, that allocation is subject to review under the deferential abuse of discretion standard. The probate court had "wide discretion to make any order and take any action necessary or proper to dispose of matters presented by a petition under section 17200. (§ 17206.) The applicable standard of review is therefore abuse of discretion. We are mindful, however, that '[t]he abuse of discretion standard is not a unified standard; the deference it calls for

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[7] The Paramount property was quitclaimed to Derek in May 2012.

varies according to the aspect of a trial court's ruling under review. The trial court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' [Citation.]" (*Manson v. Shepherd* (2010) 188 Cal.App.4th 1244, 1258-1259; see also *Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448.)

The probate court, in its discretion, adopted the trustee's interpretation and application of the Allocation Order. We see nothing arbitrary or capricious in calculating expenses based on ultimate distributive shares. Rather, from 2009 to 2012, the Paramount property comprised approximately 50 percent of Trust assets. In 2012, Derek ultimately received the Paramount property as his sole property. Derek thus received a larger share of Trust assets. It is therefore reasonable he bear a larger proportionate share of Trust expenses during the time the Paramount property was a Trust asset. Nor does this outcome assign to Derek all the burden of expenses with no concomitant benefit. The benefit he received was sole ownership of the Paramount property and its $20,000 monthly income since December 21, 2011.

Indeed, Derek tacitly agrees that allocating expenses based on each brother's ultimate distributive share of assets in each quarter is a reasonable interpretation of the Allocation Order. But in Derek's view, his ultimate distributive share of Trust assets was zero.[8] He reasons that because he disclaimed all Trust assets—except the Paramount property—he should be deemed to have received no Trust assets during that time period. That reasoning rests on a big exception and on the incorrect premise that the Paramount property was not a Trust asset. By that reasoning, Derek would receive the majority benefit from the Trust and no burden.

Derek also raises specific complaints about how tax refunds and expenses were allocated. First, the Trust paid estimated federal income taxes. At the time the payments were made, Derek's distributive share of assets was approximately 50 percent. He

[8] He alternatively argues his share was 25 percent.

therefore bore that percentage of the obligation. Thereafter, a portion of the tax payment was refunded, apparently in the amount of $107,440.[9] The probate court found that "any refund" should be "credited at the time that the refund is actually received back into the" Trust. When the tax payment was refunded to the Trust, the Paramount property was no longer a Trust asset. Therefore, Derek's distributive share of assets had dropped. Accordingly, his percentage entitlement to the refund dropped. As we have said, allocating expenses, and credits, based on each beneficiary's ultimate distributive share in each quarter was not abuse of discretion.

That the court ordered other federal estate tax payment refunds to be allocated differently, i.e., based on the amount each beneficiary actually paid, does not compel us to conclude otherwise.[10] It is unclear from this record what taxes are at issue and whether there was a reason for treating income and estate tax refunds differently. It was Derek's burden, as appellant, to show error. (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [" 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]"].)

Derek's second complaint is he should not bear any responsibility for expenses related to the Residence because he disclaimed that asset. We repeat: expenses were allocated based on ultimate distributive shares per the Allocation Order. Allocation of

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[9] We cannot ascertain from Derek's citations to the record whether this figure is correct, but respondents do not dispute it.

[10] The probate court ordered, "All of the estimated federal estate tax payments were eventually refunded to the Trust. Derek's allocated share of expenses shall be adjusted so that he receives a refund of the Trust's estimated federal estate tax payment equal to the amount of the estimated payment that is allocated to him."

expenses was not based on tracing expenses to the specific asset.[11] Insofar as Derek argues that the trustee could not designate certain costs (mortgage payments, property taxes, homeowner's insurance, utility payments, and maintenance) as Trust expenses, he cites no authority for his position. (See generally *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [contentions waived when there is failure to support them with reasoned argument and citations to authority].) Moreover, inclusion of such costs does not run afoul of the terms of Trust, which provides: "4.045 PAYMENT OF TRUST EXPENSES: The Trustee may pay or reserve sufficient funds to pay all expenses of management and administration of the Trust Estate of Trusts A and B, including the compensation of the Trustee."

II. Allocation of rental income

Derek next contends that the probate court's finding that he is not entitled to any rental income from the Paramount property for the period before December 21, 2011 and from the Residence is unfair and inconsistent with a finding he should bear all of the expenses related to the Paramount property and with *Douglas I*. We disagree.

The matter hinges on the interpretation of Eva Maria's Second Amendment to the Trust. Such interpretation of a trust instrument is a question of law, unless interpretation turns on the credibility of witnesses or a conflict in extrinsic evidence. (*Burch v. George* (1994) 7 Cal.4th 246, 254, superseded by statute on other grounds as recognized in *Estate of Rossi* (2006) 138 Cal.App.4th 1325, 1331-1332, 1339.) In construing the trust instrument, we must ascertain and give effect to the settlor's intent as expressed in the language of the trust. (*Kropp v. Sterling Sav. & Loan Assn.* (1970) 9 Cal.App.3d 1033, 1044-1045; § 21102, subd. (a).)

Eva Maria's Second Amendment provided:

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[11] Aside from being bound by the Allocation Order, the trustee asserts that she could not allocate expenses in this way because the former trustees' records did not provide a breakdown of expenses by asset.

"Upon the death of the [*sic*] Eva Maria Douglas, the Trustee shall distribute the balance of the trust estate as follows:

"(i) . . . The real property located at 16400 South Garfield Avenue, Paramount, California shall be distributed to the surviving settlor's son, Derek B. Douglas, but only upon execution by Derek B. Douglas of a valid disclaimer of all other assets held in this Trust A and all assets held in Trust B, also known as the Riley E. Douglas Exemption Trust, Dated December 4, 1992.

"(ii) . . . The remaining trust assets shall be distributed to settlor's children [Randall, Scott and Garret] in equal shares. . . . If Derek B. Douglas executes a valid disclaimer as described in subparagraph (i), above, then the residue shall be distributed equally to [Randall, Scott and Garret], or their issue as set forth herein, and shall not be distributed to" Derek or his issue. (Capitalization omitted.)

Based on these express terms, any interest Derek had in the Paramount property was a contingent, not a vested, one. (See *Estate of Jameson* (1949) 93 Cal.App.2d 35, 38-39 [" 'The general rule is that where the legacy or devise is given to a person to be paid at a future time, it vests immediately. When, however, it is not given until a future time it is contingent and does not vest until that time occurs' "], superseded by statute on other grounds as stated in *Estate of Gallio* (1995) 33 Cal.App.4th 592, 598.) In *Jameson*, for example, the decedent's will devised to her husband a life estate in real property "and in the event of his death, or *if he did not survive distribution of her estate*, said real property to go in equal shares to her nephews." (*Id.* at p. 36.) The devise to the husband was thus "made upon a condition precedent," i.e., that he survive distribution of the decedent's estate. (*Id.* at p. 40.) "Accordingly neither his life estate in the realty nor his interest in the residue could vest until such condition was fulfilled. Until that time he had a mere expectancy in the property devised. In the interim, title to the life estate and to the residue vested in the remaindermen . . . subject to divestiture upon fulfillment of the condition." (*Ibid.*)

Similarly, Derek's interests were contingent on him making an election. He had a choice: upon his mother's death, either take sole ownership of the Paramount property and disclaim all other Trust assets *or* own a quarter interest in all Trust assets, including the Paramount property and rental income. (See generally § 265 [" 'Disclaimer' means any writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary."].) Derek, however, did not execute his disclaimer until approximately two years after his mother died. As we said in *Douglas I*, "Nothing prevented Derek from accepting the conditional gift in March 2008 when Eva Maria signed the Second Amendment, long before this action commenced." (*Douglas I*, *supra*, B236217, at [p. 16].) When Derek finally executed a valid disclaimer, rental income became residue of the Trust, to be distributed per the terms of the Second Amendment to the residuary beneficiaries: Randall, Scott and Garret.

Nor did *Douglas I* hold otherwise. Derek characterizes *Douglas I* as holding that "until such time as Derek accepted the conditional gift of the Paramount Property 'he shared equally with his brothers the rent and liabilities of the Paramount property.' " *Douglas I* in fact states: "Until Derek satisfied the conditions in the Second Amendment, that is, accepted the gift and disclaimed all other assets in the Douglas Trust, Derek was not entitled to all of the rent from the Paramount property. Under the terms of the Douglas Trust, he shared equally with his brothers the rent and liabilities of the Paramount property." (*Douglas I*, *supra*, B236217, at [p. 15].) By this, we simply rejected Derek's contention he was entitled to *all* of the rental proceeds from the Paramount property. That last sentence was not a directive about how rental proceeds predating December 21, 2011 or any Trust residue should be distributed. It was simply a holding about how they could not be distributed.

III. Allocation of mortgage interest payments to Derek

Eva Maria took out $450,000 in loans, using the Residence as collateral. Because the Residence was an Exemption Trust asset, the probate court found that the loans were improper. And because Derek benefitted from those loans, the court ordered him to

repay $450,000 to the Trust and to pay prejudgment interest. *Douglas I* upheld the repayment but struck the award of prejudgment interest, finding no "legal basis" for it. Thereafter, the trustee allocated to Derek all expenses relating to those loans, i.e., mortgage interest payments.

Derek contends that requiring him to pay expenses related to these loans was an "end run" around *Douglas I*'s conclusion he did not have to pay prejudgment interest. Prejudgment interest, however, is a form of damages intended to make a plaintiff whole "for the accrual of wealth which could have been produced during the period of loss." (*Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1790; see also *Wisper Corp. v. California Commerce Bank* (1996) 49 Cal.App.4th 948, 958.) In contrast, the trustee attributed to Derek mortgage interest incurred as a result of the loans Eva Maria took out for Derek. As the probate court said, the mortgage interest is "actual interest paid." Notwithstanding that the amount of prejudgment interest may have approximated the amount of mortgage expenses, the two are not the same.

Nor is the rationale for striking the prejudgment interest and the rationale for requiring Derek to pay mortgage expenses the same. We struck the prejudgment interest award because there was no legal basis for it. But the court's allocation of mortgage expenses to Derek was an exercise of discretion, based on findings that the loans benefitted Derek. Eva Maria, for example, used the HELOC loan to establish a day trading account for Derek. She used the other loan to improve the Paramount property, which became Derek's sole property. Eva Maria thus burdened an Exemption Trust asset, originally intended to benefit all sons, to benefit one son, Derek. We see no abuse of discretion or inequity in the probate court's allocation of expenses associated with those loans to Derek.

We similarly reject Derek's claim that the trustee should have used the $450,000 Derek repaid to the Trust to pay off the loans immediately, thereby avoiding additional interest and expenses. The record does not show why the loans were not paid off in

2010, when Derek repaid the Trust.[12] Derek therefore has not shown any abuse of discretion with respect to that decision of the trustee.

To the extent he argues that his brothers and/or the trustee delayed raising this issue to his prejudice, no such showing has been made, and the record does not show that any statute of limitations or laches defense was raised in the probate court. (See generally *In re Hochberg* (1970) 2 Cal.3d 870, 875 [reviewing court limited to matters contained in record and not those suggested in briefs].) In any event, the record does not support those defenses.

IV. The lien.

To "secure any payments that are or may become due from Derek B. Douglas to the [Trust] as a result of the pending appeals . . . and to secure any payments that may become due from Derek B. Douglas" to the Trust, the probate court ordered a $1million lien to be recorded against the Paramount property in the Trust's favor. The court reduced the lien to $500,000. Derek does not appear to argue that the probate court abused its discretion in ordering the lien. He instead argues it is no longer necessary because, based on events occurring after this appeal was filed, he owes no current debt to the Trust. The record does not support his argument, and we therefore reject it.

[12] Without citing the record, the trustee states in her respondent's brief that she did not do so to ensure the Trust had adequate resources to meet its future and contingent liabilities.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.