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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

DENNIS SOLOMON, Plaintiff and Appellant, v. HOOVER LOUIE, as Trustee, etc., Defendant and Respondent.	B281416 Los Angeles County Super. Ct. No. BP153887

APPEAL from a judgment of the Superior Court of Los Angeles County, Maria E. Stratton, Judge. Affirmed.

Dennis J. Solomon, in pro. per., for Plaintiff and Appellant.

Russell, Mirkovich & Morrow, Joseph N. Mirkovich and Margaret E. Morrow for Defendant and Respondent.

INTRODUCTION

Dennis Solomon challenges the validity of an addendum that amended his aunt's trust to leave him with only $5 instead of one-third of her estate. Representing himself in a court trial, Solomon contended the trust amendment was the product of undue influence and fraud. The trial court found Solomon presented no credible evidence to support his claims and granted successor-trustee Hoover Louie's (trustee) motion for judgment under Code of Civil Procedure section 631.8 (section 631.8) on Solomon's petitions to invalidate the addendum and for an accounting. Solomon now appeals in propria persona from that judgment. We affirm.

FACTS AND PROCEDURAL BACKGROUND

We state the facts in the light most favorable to the judgment, as substantially set forth in the trial court's written ruling granting trustee's motion for judgment.[1]

1. *The Trust and addendum*

Dorothy Horwitz was Solomon's and his brother Murray Solomon's aunt. She had no children and her husband Walter predeceased her. On March 6, 2012, she created The Dorothy Horwitz Family Trust (Trust). The Trust provides that after payment of debts and expenses, the remainder of the trust property shall be distributed to Dennis Solomon, Murray Solomon, Nicolas Adrian Sanchez—"the settlor's friend"—

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[1] Trustee moved to augment the record to include the minutes of the trial court. Having considered the motion and Solomon's opposition, we now grant that motion to augment. As trustee notes, without the trial court's minute orders, including its written ruling on trustee's motion for judgment, we would have no record of the court's findings to review.

and charitable organizations listed in Schedule B (but no organizations are listed there).

The Trust could be amended or revoked during Mrs. Horwitz's lifetime, but became irrevocable on her death. Any amendment to the Trust must be in writing, executed by Mrs. Horwitz, and delivered to trustee. The Trust also grants trustee power to "prosecute or defend actions, claims, or proceedings of whatever kind for the protection of the trust property." It does not require trustee to give periodic accounts to anyone, but provides trustee "shall render accounts at the termination of a trust and on a change of trustees to the persons and in the manner required by law." The successor trustee "may, but need not, render accounts" when a predecessor trustee has failed to do so as required.

Mrs. Horwitz amended the Trust through an Affidavit and Addendum to the Trust dated November 18, 2013, which the court identified as "Court's Exhibit A" (the addendum). The addendum consists of five pages. The first two pages are a "jurat" and an "affidavit" that the court describes as "form documents with a notary stamp and a signature of 'Doris Tucker Notary Public' on the signature line for a notary public." The third page is an "Addendum" changing the distribution of the Trust's assets. It is signed by " 'Dorothy Horwitz' dated November 18, 2013," and has "a signature line for 'Witness' which was executed and dated November 18, 2013."

Page 3 of the document reads,

> "Upon my death the only ones to enter my condo and absolutely no one else are[:] The Aparicio's [*sic*] and Hoover Louie. Rose [Aparicio] can take what she wants except for the wood and tile sculptures, which are to be shipped prepaid to Murray Solomon. All

> household goods to be given to the Salvation Army or Goodwill. Condo is to be sold as is, by Rose Aparicio's Realtor; [*sic*] Steven Tran, [*sic*] the proceeds are to be used to pay my executor Hoover Louie. The balance is to be distributed amongst charities. All monies used by me before my death, are to be deducted from charities. I have three safe deposit boxes. [Description of location of safe deposit boxes and keys omitted.] Sell all jewelry and add to charities. [¶] Jewelry to be sold and proceeds to go to St. Jude Childrens charity."

Pages 4 and 5 list specific charities and individuals and the amounts each is to receive from the Trust: Rose Aparicio is to receive $25,000 to hold and pay to Nicolas Sanchez (her grandson) on November 2, 2020; Edward Liu is given " '[a]ll patio plants plus floor to ceiling ladder in garage' "; and Andrea Ebert is given $10,000, Murray Solomon $5,000, and Solomon $5. Several listed charities are given amounts ranging from $5,000 to $300,000. St. Jude and Los Angeles Children's Hospital receive the largest bequests of $300,000 each. The addendum also donates the proceeds from two cars to charity.

Mrs. Horwitz died November 25, 2013, one week after executing the addendum.

2. *The petitions*

On December 5, 2014, Solomon filed an amended petition for an order invalidating the "purported" November 18, 2013 addendum. His claimed grounds were Mrs. Horwitz's lack of testamentary and contractual capacity; undue influence by Rose Aparicio and others; and constructive fraud/breach of fiduciary duty by trustee. Trustee answered and objected to the amended petition, and Solomon filed a supplement adding claims for fraud

in drafting the addendum; forgery of Mrs. Horwitz's signature; and breach of fiduciary duty to the Trust.

Solomon also filed a first amended petition for an accounting, a complete copy of the terms of the Trust, and determination of the validity of the "purported" addendum. That petition included six claims for relief based on failure to provide a copy of the trust; conversion and concealment of assets; actions adverse to beneficiary; failure to preserve trust assets; and constructive fraud and breach of fiduciary duty. It also asked the court to compel trustee to provide an accounting. Trustee filed objections to this first amended petition, as well.

3. *Trial*

The court heard Solomon's petitions during a four-day court trial in June 2016. At trial, Solomon called three witnesses: trustee's attorneys Margaret Morrow and Joe Ling, and Nicolas Sanchez, one of the Trust's beneficiaries. He also testified on his own behalf.

Morrow testified to the contents of Mrs. Horwitz's safe deposit boxes. She was not involved with any of the parties when the addendum was signed. She produced the original addendum, which the court received into evidence.

Ling testified trustee is his brother-in-law, and they share office space, a fax machine, and telephones. His law practice and trustee's accounting practice otherwise are separate. Ling agreed to represent trustee about a month after Mrs. Horwitz died when trustee asked Ling questions about the Trust and addendum. Ling confirmed he spoke to Solomon and received compensation for his services to the Trust.

Sanchez testified Rose Aparicio is his grandmother and was Mrs. Horwitz's best friend. His "mother handled any Trust paperwork because he was gone." His grandmother told him he was a beneficiary of the Trust, but he never read it. Sanchez also

testified he received the addendum, but did not recall if he saw the notary's signature on it. He also had no reason to believe Mrs. Horwitz "would have left him [one-third] of her estate."

Last, Solomon testified. He said he "had a long and loving relationship with his aunt Dorothy over his adult life." He testified about Horwitz's Jewish heritage and that she had judaica and historic albums of a famous Jewish cantor in her house. He said the cantor gave the Horwitzes Torah bells made into charm bracelets that Solomon valued at $7.4 million. He testified Murray was sent only four sculptures and Solomon had not received a list of jewelry and collectibles from Mrs. Horwitz's home.

Mrs. Horwitz was diagnosed with cancer in 2011. Solomon said he told Rose Aparicio he could come out "at any time on a moment's notice." He and his brother spoke to Mrs. Horwitz regularly over the phone. Solomon stopped traveling in 2007 after a knee injury. He had planned a trip to Los Angeles in December 2013, but Mrs. Horwitz died.

Solomon testified that when he called, Aparicio told him Mrs. Horwitz had died. He asked about the estate and Aparicio referred him to trustee, who referred him to Ling. Solomon "felt he was getting the runaround." Ling sent him the Trust documents about four months after Mrs. Horwitz died.

On cross-examination, Solomon testified he had no documents to corroborate an earlier statement that he had visited Mrs. Horwitz in October 2012. He testified he had not been in her house since 2005 or 2006. Mrs. Horwitz and Solomon did not email each other.

After Solomon concluded his testimony, he rested, but at his request the court permitted him to reopen his case. He testified he knew Mrs. Horwitz's signature and "in his lay opinion, he believes the handwriting on the addendum is not the

same as the signature on the trust document." He said the letter "D" was different and the signatures were very different. He also said Mrs. Horwitz's check register showed she stopped making entries after October 2, 2013, when Rose Aparicio began to make entries. Rose wrote herself a check for $200 on October 28, 2013.

In Solomon's opinion, "it was unlikely [Mrs. Horwitz] could write a flowing signature on the jurat given the jagged nature of her writing in the check register." The court marked the check register for identification only. Solomon also reviewed a "POLST" form (Physician Orders for Life-Sustaining Treatment) signed[2] six days before Mrs. Horwitz signed the addendum and Mrs. Horwitz's signatures on health records. The evidentiary status of those documents is unclear.[3] The court struck Solomon's opinion testimony "as it lacked foundation."

Solomon testified his last conversation with Mrs. Horowitz was in November 2013, and he "found her delirious." He told her he was coming to Los Angeles in early December and that she said she looked forward to his visit. Solomon further testified Mrs. Horwitz "did not display sharpness or acuity as she had before."

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[2] The ruling states Mrs. Horwitz signed the POLST form, but as Solomon contends, Rose Aparicio, not Mrs. Horwitz, signed it. The misstatement is immaterial to the court's ruling and Solomon's contentions on appeal.

[3] The court admitted into evidence exhibit 19, described as "health records," but the ruling refers to the health records Solomon reviewed as exhibit 106. Solomon contends the minutes fail to state that the POLST form (exhibit 12), health records (exhibit 106), and check register (exhibit 10) were admitted into evidence. The court's minutes state exhibits 10 and 12 were marked for identification only and do not mention exhibit 106.

Solomon then testified he left his trade secrets with Mrs. Horwitz, that he had a photograph of her wearing a $25,000 diamond ring and a $2,000 necklace, and that she owned a chain with a charm from the first director of the Mossad. He claimed those items—which were not listed on the inventory of Mrs. Horwitz's home—"disappeared because of Joe Ling and Margaret Morrow." Solomon described their law firm as "in a shipping business in Long Beach which is a center of anti-Israeli sentiment" and that he (Solomon) "has a history of being pro-Israel and of complaining to Senator Ted Kennedy about anti-Israeli speech and actions." He also believed Ling and trustee were motivated "to exclude all Jewish charities and substitute Syrian charities as beneficiaries of the trust and also to lose [Mrs. Horwitz's] judaica." He claimed St. Jude's, one of the beneficiaries listed in the addendum, is a Syrian charity. At the end of his testimony, Solomon rested, and trustee moved for judgment on both petitions under section 631.8. The court heard argument and took the motion under submission.

4. *Trial court's ruling*

On August 3, 2016, the court issued its written ruling on trustee's motion for judgment. The court granted the motion and denied Solomon's two amended petitions on the ground Solomon failed "to present sufficient, credible evidence" in support of them.

As to the amended petition to invalidate the Trust addendum, the court found no credible evidence to support Solomon's theory Mrs. Horwitz lacked testamentary capacity. The court also found Solomon presented no evidence Rose Aparicio unduly influenced Mrs. Horwitz into executing the addendum, and he did not prove she was Mrs. Horwitz's caretaker. The court concluded there was no evidence of constructive fraud by Aparicio, trustee, or the Trust's three attorneys. Finally, the court rejected Solomon's theory that

the notary invalidated the addendum by failing to sign it at the time Mrs. Horwitz executed it.

As to Solomon's amended petition for an accounting, the court concluded there was no evidence trustee concealed or converted any of Mrs. Horwitz's assets, pursued any interest adverse to the Trust, failed to preserve trust assets, or unduly influenced Mrs. Horwitz to change the Trust. The court also noted beneficiaries are not entitled to an accounting when a trust waives an accounting, as this one did, and Solomon testified he had received a copy of the Trust.

5. *Posttrial and appeal*

Solomon filed a motion for new trial. His motion and reply brief are part of his appendix, but trustee's opposition and the court's order denying the motion are not.

Solomon filed a timely notice of appeal from the judgment and order denying his motion for new trial.[4] The record on appeal does not include a reporter's transcript. The trial court denied Solomon's motion to proceed by settled statement as untimely, having been filed more than five months after his designation of the record. This court also denied Solomon's motion to proceed by settled statement and his motion for reconsideration. We allowed Solomon to file an amended designation for the clerk's transcript and to proceed without a record of the oral proceedings.

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[4] Solomon provides no argument or citations to authority in his opening brief to support any contention that the court erred when it denied his motion for new trial. We treat the issue as forfeited. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655-656 (*Keyes*) [points not properly supported by legal authority forfeited]; *Padilla v. Rodas* (2008) 160 Cal.App.4th 742, 753, fn. 2 [" 'An appellant abandons an issue by failing to raise it in the opening brief.' "].)

We note Solomon's original record designation included a reporter's transcript with an application to the Transcript Reimbursement Fund. He apparently was denied those funds. Nevertheless, in that original designation Solomon did not request that the reporter's transcript include the trial dates. Thus, even if Solomon had received the requested funds to prepare a reporter's transcript, the trial testimony would not have been part of it.[5]

Solomon filed several additional motions that we denied: motion to disqualify counsel, motion for the recusal of Justice Lavin, motion to strike the respondent's "opposition to the appeal," motion to take additional evidence, motion to file an amended appellant's brief, and others filed after oral argument was calendared. We granted Solomon's two motions to file a two-

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[5] In his reply brief, Solomon appears to contend he is entitled to a free "official verbatim record" of the trial court proceedings under *Jameson v. Desta* (2018) 5 Cal.5th 594, and trustee's arguments about the inadequacy of the record are thus "moot." Under *Jameson*, courts must "make an official court reporter available" to fee waiver recipients upon request. (*Id.* at pp. 623, 625.) Our Supreme Court, however, "has not yet addressed the question under what circumstances an in forma pauperis civil litigant may be entitled to obtain a free reporter's transcript when such a transcript is essential to the resolution of the litigant's appeal on the merits." (*Id.* at p. 624.) Solomon does not contend a court reporter was not provided during trial. And, the court's minutes from each day of trial identify the name of a court reporter. *Jameson* therefore is inapplicable. In any event, as Solomon did not designate the trial dates for inclusion in the reporter's transcript, any error in failing to provide a reporter's transcript was harmless.

volume appendix of exhibits lodged and documents filed with the trial court, however.[6]

DISCUSSION

Solomon primarily argues he proved the addendum was invalid based on various grounds. He asks this court to grant his petition to invalidate the addendum or to grant him a new trial. We address Solomon's contentions, but note most of his opening brief is spent rearguing the evidence without citation to the record. Because Solomon cannot demonstrate the court erred based on the record before us, we affirm.

1. *Section 631.8 and standard of review*

Section 631.8 permits a party in a court trial to move for judgment after the other party has completed its presentation of evidence. (§ 631.8, subd. (a).) If after weighing the evidence the trial court concludes a plaintiff failed to meet the burden of proof at the conclusion of the plaintiff's case-in-chief, it may enter judgment in defendant's favor without the need for defendant to produce evidence. (*Roth v. Parker* (1997) 57 Cal.App.4th 542, 549 (*Roth*).)

We review a judgment entered after a section 631.8 motion for substantial evidence. (*Roth, supra*, 57 Cal.App.4th at p. 549.) "[T]he trial court's grant of the motion will not be reversed if its findings are supported by substantial evidence. [Citation.] Because section 631.8 authorizes the trial court to weigh evidence and make findings, the court may refuse to believe witnesses and draw conclusions at odds with expert opinion. [Citation.]" (*Id.* at pp. 549-550.)

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[6] Solomon did not designate the documents in his two-volume appendix by trial exhibit number. Nor can we tell from the appendix what documents were received into evidence.

We defer to the trial court's credibility determinations and " ' "the truth or falsity of the facts upon which a determination depends." ' [Citation.]" (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.) The trial court is not bound by uncontradicted evidence, and "where uncontradicted testimony has been rejected by the trial court, it 'cannot be credited on appeal unless, in view of the whole record, it is clear, positive, and of such a nature that it cannot rationally be disbelieved.' " (*Adoption of Arthur M.* (2007) 149 Cal.App.4th 704, 717.)

Our power thus "begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support" the trial court's findings. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.) Where, as here, " 'the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.' " (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 466.)

Notably, "[w]e do not review the evidence to see if there is substantial evidence to support the losing party's version of events, but only to see if substantial evidence exists to support the [judgment] in favor of the prevailing party." (*Pope v. Babick* (2014) 229 Cal.App.4th 1238, 1245 (*Pope*).) While we are mindful defendant is representing himself on appeal, he "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) Thus, he is bound to follow the most fundamental rule of appellate review, which is that the judgment or order challenged on appeal is presumed to be correct, and "it is the appellant's

burden to affirmatively demonstrate error." (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

"All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) To overcome this presumption, an appellant must provide a record that allows for meaningful review of the challenged order. (*Ibid.*) If the record does not include all of the evidence and materials the trial court relied on in making its determination, we will not find error. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955.) And, when an appeal proceeds without a reporter's transcript of the proceedings, "[t]he trial court's findings of fact and conclusions of law are presumed to be supported by substantial evidence and are binding on the appellate court, unless reversible error appears on the record." (*Bond v. Pulsar Video Productions* (1996) 50 Cal.App.4th 918, 924 (*Bond*).)

Further, "an appellant must present argument and authorities on each point to which error is asserted or else the issue is waived." (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867.) Matters not properly raised or that lack adequate legal discussion will be deemed forfeited. (*Keyes, supra,* 189 Cal.App.4th at pp. 655-656.) In short, an appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record. (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556-557.)

2. *Trustee had standing to object to the petitions and did not breach his duty of loyalty*

Solomon initially contends trustee had no standing to object to his petition to invalidate the Trust, also arguing trustee violated his duty of loyalty to the Trust beneficiaries, namely

Solomon, by doing so. "If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them." (Prob. Code, § 16003.) Thus, as the cases Solomon cites explain, a trustee may not litigate the claims of one beneficiary against another, or act for only some beneficiaries and not others. (See *Estate of Ferrall* (1948) 33 Cal.2d 202, 204 [trustee cannot litigate conflicting claims of beneficiaries through appeal from order "determining which beneficiaries are entitled to share in a particular fund"]; *Roach v. Coffey* (1887) 73 Cal. 281, 282 [estate administrator may not represent "either side of a contest between" heirs or beneficiaries].)

Here, however, trustee is not litigating over how the beneficiaries are to share the Trust property or appealing from an order determining who is entitled to what under the Trust. Rather, trustee is defending a challenge to the validity of an amendment to the Trust—the addendum—and thus is fulfilling his duty to defend the integrity of the Trust. (Prob. Code, § 16000 ["trustee has a duty to administer the trust according to the trust instrument"]; *Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 292-293 [successor trustee had standing to demur to petition to determine validity of trust amendment as part of his "duty to defend against any action that would diminish the funds to be distributed to the decedent's intended beneficiaries"]; see also Prob. Code, § 16060.5 [" 'terms of the trust' includes . . . signatures, amendments, . . . and any directions or instructions to the trustee that affect the disposition of the trust"].) Accordingly, trustee had standing to object to Solomon's challenge to the validity of the Trust addendum in the trial court and to respond to Solomon's appeal. And, he did not breach his duty of loyalty by doing so.

3. *Validity of addendum*

Solomon challenged the validity of the Trust addendum in both of his petitions. At trial, he contended the addendum was invalid on three grounds: (1) lack of testamentary capacity; (2) undue influence; and (3) constructive fraud and breach of fiduciary duty.

a. *Solomon bore the initial burden of proof at trial*

Solomon contends trustee had the "initial burden of proof of the due execution" of the addendum. In support of this statement, he relies on authority concerning the challenge to a will submitted to probate.[7] Here, of course, trustee did not submit a will to probate that Solomon challenges; *Solomon initiated this action* through his petition to invalidate certain terms of a *trust*. (Prob. Code, § 17200 [permitting trustee or beneficiary of trust to petition court concerning internal affairs of trust, including to determine validity of trust provision].)

Solomon thus fundamentally misunderstands his burden of proof at the trial of *his petitions* brought under Probate Code section 17200.[8] He complains trustee did not appear at trial and argues trustee "produced no testimony or witness with personal knowledge of the signatures of Dorothy Horwitz, notary Doris Tucker or any other relevant signor," presented no witnesses to testify to "the drafting, transcribing or execution" of the

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[7] Solomon cites to Probate Code section 8252, subdivision (a) (proponent of will has "burden of proof of due execution") and *Estate of Ben Ali* (2013) 216 Cal.App.4th 1026, 1028 ("insufficient evidence of due execution" of will under Probate Code section 6110 governing written requirements of will).

[8] Only Solomon's amended petition for an order invalidating the addendum filed December 5, 2014, is part of the record on appeal.

addendum, and "proffered no independent documents showing that my Aunt Dorothy had the capacity to write the present date or sign after 10/31/13."

As the petitioner "challenging the validity of a trust instrument on the grounds that the trustor lacked capacity to execute the document or did so under the undue influence of another," Solomon bore the "heavy burden of proving such allegations." (*Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 545 (*Doolittle*); see also Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."].) Trustee would not have been required to present any evidence to prove the validity of the addendum until after Solomon rested his case-in-chief. Trustee's section 631.8 motion obviated the need for him to do so, however, because the court found, after weighing the evidence, Solomon had failed to meet his initial burden of proof. (*Roth, supra*, 57 Cal.App.4th at p. 549 [section 631.8 enables court " ' "to dispense with the need for the defendant to produce evidence" ' "].) Solomon thus cannot establish the court erred in granting trustee's motion by arguing trustee did not present any witnesses or evidence to authenticate the addendum at trial. It was Solomon who needed to call witnesses to support his theory the addendum was forged or obtained through fraud or undue influence. He failed to do so, and the court found Solomon's evidence lacking and his testimony not credible. We do not reweigh evidence or reevaluate the court's credibility determinations (*Pope, supra*, 229 Cal.App.4th at p. 1246), and, unless error appears on the face of the record, we presume substantial evidence supports the court's findings (*Bond, supra*, 50 Cal.App.4th at p. 924).

Solomon also contends the court erred in admitting the addendum into evidence because it was not authenticated, citing Evidence Code sections 1400 and 1401 and Los Angeles Superior Court Rule 3.205(b). Solomon does not cite the record to demonstrate he objected to the admission of the addendum into evidence *at trial*. He has thus forfeited the issue on appeal. (*People v. Smith* (1986) 180 Cal.App.3d 72, 80 ["failure to object to evidence at trial on the same ground urged on appeal precludes raising that issue on appeal"].) Moreover, the court necessarily had to consider evidence of the addendum at trial. Solomon contends the court could have considered the addendum as a fraudulent document but erred by considering it evidence of an amendment to the Trust. Again, Solomon misunderstands his burden of proof. He bore the initial burden to establish the addendum was invalid through admissible evidence. Upon weighing the evidence, including Solomon's testimony, the court was not persuaded. Thus, the court never had to consider whether trustee could affirmatively prove the addendum was valid.

b. *The record supports the court's finding Solomon failed to prove his aunt lacked testamentary capacity*

A rebuttable presumption exists "that all persons have the capacity to make decisions and to be responsible for their acts or decisions." (Prob. Code, § 810, subd. (a).) Thus, " '[t]he standard for testamentary capacity is exceptionally low.' " (*Doolittle, supra*, 241 Cal.App.4th at p. 545.) As the trial court noted, to find a person lacks testamentary capacity requires evidence of a deficit in mental function, not simply the diagnosis of a mental or physical disorder. (Prob. Code, § 810, subd. (c).) To be considered, the deficit must "significantly impair[ ] the person's ability to understand and appreciate the consequences of his or

her actions with regard to the type of act or decision in question." (Prob. Code, § 811, subd. (b).)[9]

The trial court found Solomon presented no credible evidence to support his theory that Mrs. Horwitz lacked testamentary capacity when she executed the addendum. The court noted Solomon failed to present evidence Mrs. Horowitz suffered any mental deficits; he presented no medical opinions or medical evidence. The court found Solomon's opinion that "his aunt would never disinherit him, his brother, or any Jewish charities because of her own Jewish heritage" unsupported by the facts: Solomon had not seen his aunt since 2007 or 2006 when his own medical issues prevented him from traveling; his claim he saw her a year before her death was unpersuasive given he had stopped traveling; he had not spoken to his aunt about her estate plans "for many years"; and his telephone conversations with his aunt centered around his life, not hers. The court concluded Solomon "simply had no reliable information on the issue of testamentary capacity."

Although Solomon recites portions of Probate Code section 811, he does not cite to evidence in the record to establish he in fact rebutted the presumption that his aunt had the capacity to make decisions concerning the Trust. Solomon refers to medical records showing Mrs. Horowitz was prescribed opioids and antipsychotic medication. Certain medical records were admitted into evidence, but we cannot tell which ones. (See fn. 3 *ante*.) Nor do we have a record of what was testified to at trial about those medical records. The trial court found Solomon presented no medical evidence to support his theory; we presume

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[9] "[E]vidence of a correlation between the deficit or deficits and the decision or acts in question" also is required. (Prob. Code, § 811, subd. (a).)

the "trial testimony would demonstrate absence of error." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) In any event, evidence Mrs. Horwitz was prescribed potentially mind-altering medications does not compel a finding she had a deficit in mental function, at the time she executed the addendum, that impaired her ability to understand the consequences of amending the Trust.

Solomon also argues his aunt's incapacity is demonstrated by her failure to refer to the Trust in the addendum as the "Family Trust," as she had done in the past, her misspelling of the word "addendum" as "adumdum," and her failure to contact her "local estate attorney" to draft the addendum. He attaches to his brief documents he asserts he presented to the trial court, but again the record does not reveal if the court received all of those documents into evidence. These facts, even if Solomon presented admissible evidence supporting them at trial, do not compel a finding that Mrs. Horwitz had a deficit of mental function impairing her testamentary capacity at the time she executed the addendum, in any event. Accordingly, Solomon has failed affirmatively to demonstrate error on this issue.

c. *The record supports the trial court's finding Solomon failed to present evidence to establish a presumption of undue influence*

The court also concluded Solomon presented no evidence Rose Aparicio unduly influenced Mrs. Horwitz into executing the addendum. As the trial court noted, the party attempting to invalidate a trust has the burden of proof unless the challenger can show a presumption of undue influence exists. (*Rice v. Clark* (2002) 28 Cal.4th 89, 97 (*Rice*).) Under Probate Code section 21380, subdivision (a), an instrument is "presumed to be the product of fraud or undue influence" if it makes a donative transfer to, among others, "(1) [t]he person who drafted the

instrument[;] [¶] (2) [a] person who transcribed the instrument or caused it to be transcribed and who was in a fiduciary relationship with the transferor when the instrument was transcribed[; or] [¶] (3) [a] care custodian of a transferor who is a dependent adult, but only if the instrument was executed during the period in which the care custodian provided services to the transferor, or within 90 days before or after that period." The person who contests the validity of the donative transfer—Solomon—bears the burden of "establishing the facts that give rise to the presumption." (Cal. Law Revision Com. com., Deering's Ann. Prob. Code (2018 supp.) foll. § 21380, p. 315.)

Under the common law, a presumption of undue influence arises if the challenger to the donative instrument proves that "(1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in procuring the instrument's preparation or execution; and (3) the person would benefit unduly by the testamentary instrument." (*Rice, supra*, 28 Cal.4th at p. 97.)

The record does not compel a finding that Solomon met his burden under Probate Code section 21380 or the common law. Solomon contends the presumption applies because Rose Aparicio was Mrs. Horwitz's fiduciary and transcribed the addendum.[10] He asserts the POLST form[11] Aparicio signed as Mrs. Horwitz's "[l]egally [r]ecognized [d]ecisionmaker" with power of attorney

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[10] On appeal, Solomon does not contend Aparicio was Horwitz's caregiver. He argues the court should have considered Aparicio a " 'trusted friend and fiduciary' " rather than a " 'caretaker.' "

[11] Solomon attached a copy of the POLST form to his opening brief. As we have said, the record shows it was marked for identification only.

and Aparicio's possession of keys to Mrs. Horwitz's home, establish she was in a confidential, fiduciary relationship with Mrs. Horwitz. He also asserts that when the court denied trustee's motion for summary judgment, it found Aparicio was a new beneficiary under the addendum and a fiduciary.

The record does not include any documents filed in support of or in opposition to trustee's motion for summary judgment, other than a few pages from trustee's separate statement, or the court's order denying it.[12] Even if the court received the evidence at trial showing Aparicio was Mrs. Horwitz's fiduciary, Solomon presented no evidence that Aparicio drafted or "transcribed" the addendum or "actively participated in 'procuring' the instrument's preparation or execution." (*Rice, supra*, 28 Cal.4th at p. 97.) Solomon did not call Aparicio as a witness or any individual who was present when Mrs. Horwitz executed the addendum. He called Nicolas Sanchez, Aparicio's grandson, but Sanchez simply testified that Aparicio was Mrs. Horwitz's best friend, and Aparicio had told him he was a beneficiary of the Trust.

On appeal, Solomon relies on Aparicio's deposition testimony, that she and her daughter printed the addendum from a file on Mrs. Horwitz's computer at Mrs. Horwitz's request, to contend Aparicio "transcribed" the addendum. We have no record the court admitted that deposition testimony into evidence at trial.[13] Nevertheless, Aparicio's and her daughter's printing

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[12] And, of course, on summary judgment trustee bore the initial burden of proof to affirmatively negate Solomon's claims. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 334.)

[13] Solomon argues the court received this evidence during the summary judgment proceedings, of which we have no record.

of the addendum from an existing computer file is not evidence Aparicio helped to prepare, drafted, or transcribed—i.e., made a written or typed copy of—the addendum. (*Rice*, *supra*, 28 Cal.4th at pp. 91, 101 [interpreting meaning of "transcribe" as defined by various dictionaries, including, " '[t]o make a written or typed copy of (spoken material . . .)' " and concluding person who encouraged donor to execute instrument but who did not "direct or otherwise participate in . . . instrument's transcription to final written form" not presumptively disqualified from receiving donative transfer].)

Moreover, the addendum *reduced* the bequest to Aparicio's grandson—from one-third of the trust property to $25,000—which, as the court found, "argues against undue influence by [Aparicio]." Solomon argues the addendum "grant[ed] [Aparicio] 'anything she wants.' " The court could infer the addendum's statement Aparicio "can take what she wants" only related to the contents of Mrs. Horwitz's house. And, that provision specifically excluded sculptures, to be sent to Murray; household goods, to be donated to the Salvation Army or Goodwill; and jewelry, to be sold and the proceeds given to St. Jude Children's charity. Indeed, the chief beneficiaries under the addendum to the Trust appear to be the two charities receiving $300,000 each, not Aparicio.[14] (See *David v. Hermann* (2005) 129 Cal.App.4th 672, 684 ["Among the indicia of undue influence is evidence that ' "the chief beneficiaries under the will were active

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[14] Solomon repeatedly argues Mrs. Horwitz never would have substituted these charities or the others mentioned in the addendum for her favorite Jewish or U.S. Navy charities. He presented no evidence the original Trust named these charities as beneficiaries, other than his own testimony, which the court found lacking foundation and not credible.

in procuring the instrument to be executed." ' "].) Nor does the record show Aparicio received anything of substantial value from Mrs. Horwitz's home.

On this record, we cannot conclude the court erred in finding Solomon failed to meet his burden to establish the burden-shifting presumption of undue influence.

d. *The record supports the court's finding Solomon failed to prove the addendum was forged*

The court rejected Solomon's theory at trial that the addendum was forged. The court noted Solomon relied on his own lay opinion about Mrs. Horwitz's signature and presented no experts on the subject.[15] Solomon argues the court erred in not considering his lay opinion. The court found Solomon "was not a reliable witness," however, stating he

> "spent a lot of time burnishing his credentials as inventor, scientist, clothing designer, and confidante of military and government officials. He glowingly described a loving relationship with Dorothy, whom he had not seen in eight years at the time of her death. He described the disappearance of items that he had not seen in Dorothy's possession since 1994. He ascribed their disappearance to anti-semitic beliefs held by Ling, [trustee], and Morrow, for

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[15] Solomon's appendix includes a letter from a handwriting expert, but that expert did not testify at trial and the letter was neither marked for identification nor received into evidence. We therefore do not consider it. (*Kinney v. Overton* (2007) 153 Cal.App.4th 482, 488, fn. 2 (*Kinney*) [excluding from review items in lodged exhibit book that were not admitted into evidence at trial on appeal from judgment entered under section 631.8].)

> which he could lay no factual foundation. His testimony was heartfelt, fanciful, and not credible. Moreover, by outlandishly ascribing anti-semitic beliefs to trustee's counsel, he did his credibility no favors. The court finds petitioner not credible."

Nothing in the record before us demonstrates that Solomon's opinion concerning Mrs. Horwitz's signature was of such " 'nature that it cannot rationally be disbelieved.' " (*Adoption of Arthur M., supra*, 149 Cal.App.4th at p. 717.) Moreover, as even Solomon notes, the court first must find that a lay witness "has personal knowledge of the handwriting of the supposed writer" before the witness may state his lay opinion as to "whether a writing is in the handwriting of a supposed writer." (Evid. Code, § 1416.) Here, we can infer the court impliedly found Solomon failed to demonstrate he had personal knowledge of Mrs. Horwitz's *current* handwriting when it found Solomon had not seen his aunt in many years and concluded Solomon's testimony was unreliable. Accordingly, the court did not abuse its discretion in rejecting Solomon's lay opinion that Mrs. Horwitz's signature was forged.[16]

Solomon also refers to additional documents to argue Mrs. Horwitz's signature was forged. For example, he contends the deterioration of her handwriting as reflected in her check register and the notary's deposition testimony that Mrs. Horwitz had shaky hands "are not reflected in the three signatures" to the addendum. The record does not reflect the court's admission of these exhibits into evidence. While the trial court mentioned

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[16] We review a trial court's decision whether to receive lay witness opinion testimony for abuse of discretion. (*Osborne v. Todd Farm Service* (2016) 247 Cal.App.4th 43, 50.)

the check register in its ruling, we have no record of the trial testimony about it, or the notary's deposition testimony; we thus presume substantial evidence supports the court's ruling Solomon failed to prove the addendum was forged. (*Bond*, *supra*, 50 Cal.App.4th at p. 924; see also *Estate of Miller* (1966) 243 Cal.App.2d 352, 353-354 [written agreement not considered without trial testimony to determine if court conditioned or limited its admission into evidence]; *Kinney, supra*, 153 Cal.App.4th at p. 488, fn. 2].)

Accordingly, Solomon has not met his burden on appeal to demonstrate the court erred.[17]

e. *Solomon has not demonstrated the court erred in rejecting his theory the addendum is invalid or fraudulent because the notary signed it at a later date*

Solomon accuses trustee, trustee's attorneys, and Aparicio of conspiring to defraud the beneficiaries of the Trust by fabricating the addendum and suborning the notary's perjury. He theorizes they forged Mrs. Horowitz's signature on the addendum and persuaded the notary to attest that the signature was Mrs. Horowitz's. Solomon argues their motive, at least in part, was to redirect the Trust's funds to " 'new beneficiaries' who had costly failure in schemes to obtain US-Israeli defense secrets and technology." The trial court concluded Solomon presented

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[17] Solomon also spends several paragraphs in his brief arguing the mathematical improbability that Mrs. Horwitz drafted the addendum. Nothing in the record demonstrates that he raised this argument during trial, and the court's ruling does not mention it. We presume he did not and treat the argument as forfeited. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186, fn. 2.)

"no evidence of fraud by any of these individuals." Nothing in the record before us compels a different conclusion.

Solomon first contends the addendum is invalid because the notary, Doris Tucker, did not sign the notary form "jurat" at the time Mrs. Horwitz executed the document. Solomon refers to a copy of the jurat bearing Tucker's notary seal, but not her signature, and a copy of the jurat bearing both the seal and signature. The court described its exhibit A as including the jurat the notary signed. Solomon cites to Tucker's deposition testimony that she stamped her notary seal on the jurat, but did not sign it until a later date when Orit Shapiro, an administrator at Mrs. Horwitz's care facility, requested she return to do so. Solomon also cites to statutes and other authorities requiring notaries only to stamp pages with a completed notarial certificate and precluding them from stamping a document before signing it.

In its ruling, the court stated that Solomon "brought in no admissible evidence that the notary belatedly signed the addendum." Solomon did not call Tucker as a witness. The record shows an exhibit from her deposition was marked for identification, but not admitted into evidence, and does not show the deposition transcript as identified or admitted. The court also concluded, however, that even if the notary signed the jurat "at a later date and that tardiness invalidates the notarization, notarization is not required to validate the document."

The court cited *Osterberg v. Osterberg* (1945) 68 Cal.App.2d 254, 262, in support of its conclusion. Considering a deed, the court there explained "acknowledgement of a deed is not essential to its validity," but is required only to record it. (*Ibid.*) While the authorities Solomon cites may require invalidation of the notarization, as the court concluded, they do not require invalidation of the underlying document. Moreover, if a "modification method is specified in the trust, that method

must be used to amend the trust." (*King v. Lynch* (2012) 204 Cal.App.4th 1186, 1193 [interpreting section 15402 of the Probate Code].) Here, the Trust called for any modification to be "made by written instrument signed by the settlor and delivered to the trustee." As the court concluded, therefore, the Trust does not require the writing to be notarized (or witnessed). Thus, the addendum, signed by Horwitz and delivered to trustee, would still be valid even if the notarization was flawed.

In support of his fraud allegations, Solomon also cites a "proof of subscribing witness" form declaration and letter declaration signed by Orit Shapiro, the administrator who signed the addendum as a witness. Solomon argues Shapiro declared she did not see Mrs. Horwitz sign the addendum and did not ask the notary to return to sign the addendum later. He contends the declarations demonstrate the addendum was a product of fraud.

The court's ruling does not mention Orit Shapiro or her declarations, and Solomon did not call Shapiro as a witness at trial. The record reveals Solomon provided the declarations in a pretrial filing, but the court's minutes do not *show they were marked for identification or received into evidence* at trial. We thus do not consider them on appeal. (*Frank v. County of Los Angeles* (2007) 149 Cal.App.4th 805, 814-815 [declining to consider exhibits identified but not admitted into evidence when reviewing verdict for substantial evidence].)[18] Solomon does not

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[18] Solomon does not argue the court erred by precluding him from introducing the declarations into evidence. Rather, he appears to contend he was deprived of this evidence before trial. He states he "was able to verify a copy of [*sic*] sworn Declaration of Orit Shapiro" after trial and contends trustee concealed it. He also asserts he based his new trial motion in part on the declaration. Yet, Solomon included in his appendix on appeal an email he sent to trustee's counsel on June 7, 2016—

cite to any evidence received at trial, other than his own testimony, to support this fraud theory. The record before us does not demonstrate the court erred in finding Solomon presented no evidence of fraud.

4. *The court did not err when it entered judgment on Solomon's petition for an accounting*

Finally, substantial evidence supports the court's judgment on Solomon's petition for an accounting. Solomon contends he is entitled to an accounting and the appointment of a new trustee because trustee breached his duty of loyalty under Probate Code section 16002; trustee violated Probate Code section 16004 because he had an interest adverse to the beneficiaries; the addendum was obtained through undue influence; and Mrs. Horwitz lacked testamentary capacity.

The court's ruling states Solomon "repeats his allegations of lack of testamentary capacity, undue influence, duress, fraud, and breach of fiduciary. The record does not support these allegations." Solomon has not demonstrated the court erred as to these allegations for the reasons we already have discussed. Solomon also provides no citation to the record or legal authority to show the court erred in finding Solomon had already been

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before trial—asking her to stipulate to the June 3, 2016 subscribing witness form as an exhibit. He also argued in a "Communication to the Court Under Rule 7.10(c)(2)" filed May 31, 2016—again, before trial—that trustee's counsel concealed the letter declaration Shapiro sent to trustee's counsel with the subscribing witness form. That filing included copies of the letter declaration, signed May 20, 2016, and the subscribing witness form, also signed May 20, 2016. Solomon therefore had both documents before trial. The record does not show he was wrongfully deprived of evidence.

provided a copy of the Trust and that the Trust waived an accounting.

The court also found Solomon failed to prove trustee concealed and converted Mrs. Horwitz's assets or failed to preserve trust assets. Nothing on the face of the record shows Solomon proved these allegations. As the court noted, Solomon did not call any witnesses, not even trustee, to testify about trustee's actions. He presented only his own testimony. The court found that testimony lacking, explaining Solomon's only evidence was his feeling "he was being given the 'runaround' when he inquired about the estate after Dorothy's death. There was no testimony that [trustee] in any way used trust assets for his own personal benefit or profit. There was no evidence that [trustee] pursued any interest or agenda adverse to the trust."

Additionally, the court found Solomon presented no evidence "as to any acts by the trustee or any motive" to fail to preserve trust assets or unduly to influence Mrs. Horwitz to change her trust. The court noted trustee is not a beneficiary of the Trust or the addendum to the Trust.

Solomon has not cited to any evidence in the record or to any legal authority to demonstrate these findings were not supported by substantial evidence or made in error. He merely argues his theories. He thus has not met his burden on appeal to demonstrate error. (*Keyes, supra*, 189 Cal.App.4th at pp. 655-656.)

5. *Solomon's additional assignments of error have no merit*

Solomon's opening brief also lists "material errors of fact" and "other irregularities in the proceedings" (capitalization omitted). He provides no argument as to why those purported errors of fact are material or how the court erred with respect to the purported irregularities. Similarly, he contends the trial

court erred by "denying mandatory discovery" and denying his motion to compel additional discovery responses but does not argue how the court prejudicially erred or provide citation to the record[19] or to legal authority. "It is the appellant's responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant's behalf." (*Keyes, supra,* 189 Cal.App.4th at p. 656.) Solomon thus has forfeited these issues. (*Id.* at p. 655.)

Finally, Solomon contends the trial court erred in denying his motion for a jury trial. There is no right to a jury trial on a petition to determine the validity of a trust. (Prob. Code, § 17006.)

6. *Solomon's claims of anti-Semitism, prejudice, and extraordinary circumstances are unsupported*

Solomon's claims of anti-Semitism and bias on the part of the trial court are meritless. His only citation to the record to support his contention is the trial court's description of Solomon's testimony as not credible. The court was entitled to disbelieve Solomon. (*Roth, supra*, 57 Cal.App.4th at pp. 549-550; see also Cal. Const., art. VI, § 10 [permitting court to "make any comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause"].) Solomon's contention the trial court was biased because it denied Solomon's motions also " 'do[es] not establish a charge of judicial bias.' " (*People v. Fuiava* (2012) 53 Cal.4th 622, 732 [even erroneous rulings against a party do not establish bias].) Nothing in the record supports Solomon's allegations.

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[19] Only Solomon's motion to reopen discovery and continue trial is part of his appendix, but he did not include trustee's opposition, if any, or the court's order denying the motion, or the other discovery motions or orders he mentions.

Finally, Solomon spends pages of his brief recounting unrelated past events and his belief in various conspiracies, including a "criminal conspiracy to murder my Aunt Dorothy Horwitz to gain access to US-Israel defense secrets and steal rare Judaica and other assets." Solomon's narrative is not based on the record and exceeds our review. We need not consider it.

DISPOSITION

The judgment is affirmed. Trustee is to recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.