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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Estate of MARIA ACEVEDO,
Deceased.

B270827

(Los Angeles County
Super. Ct. No. BP165225)

VICTOR ACEVEDO,

Appellant,

v.

ARTHUR CHARCHIAN, as Personal
Representative, etc.,

Respondent.

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

Speros P. Maniates for Appellant.

Silvio Nardoni for Respondent.

Maria Acevedo died intestate. Victor Acevedo, Maria's brother, appeals from an order of the Superior Court appointing Respondent Arthur Charchian as Maria's personal representative responsible for administering her estate.¹

The trial court appointed Charchian pursuant to a petition filed by Jorge Hernandez Perez (Perez), Maria's husband. Victor objected to Charchian's appointment and filed a competing petition seeking his own appointment as Maria's representative. The trial court denied Victor's petition and granted Perez's, appointing Charchian to be Maria's personal representative as Perez's nominee.

Under Probate Code section 8461, a surviving spouse's petition for the appointment of a personal representative is entitled to priority over a petition by the decedent's sibling.² Victor nevertheless argues that Perez's petition was not entitled to priority here because Perez was not actually married to Maria. In support, he cites the fact that Perez used a name on his marriage certificate that is different from the name he used in filing his petition.

We reject the argument. Uncontested evidence shows that Perez used his given name on his marriage certificate. Although Perez used an assumed name while he was married to Maria, and filed his petition under that assumed name, that fact provides no reason to doubt the validity of his marriage. Nor is there any reason to doubt that Perez is both the person who married Maria

¹ Because they share a last name, we identify Victor and Maria by using their first names. No disrespect is intended.

² Subsequent undesignated statutory references are to the Probate Code.

and the person who filed the petition. We therefore conclude that the trial court correctly appointed Charchian pursuant to Perez's petition, and we affirm that order.

BACKGROUND

Maria died intestate on September 9, 2014. Perez filed a petition in July 2015 under the name "Jorge Hernandez Perez" seeking the appointment of Charchian as Maria's personal representative.

Victor filed an objection to Charchian's appointment. The objection stated that "[t]he proposed Administrator is unfit, as an attorney who has no connection with our family, and I am filing my own Petition for Probate of the estate of my sister, as I am sure she would have wanted me to be the administrator of her affairs." As promised, Victor also filed his own competing petition asking that he be appointed Maria's personal representative.

Perez demurred to Victor's petition. Among other things, Perez argued that, as Maria's husband, his petition for appointment of a personal representative had a higher statutory priority than the petition filed by Victor, Maria's brother.

The trial court heard arguments on the two competing petitions and Perez's demurrer on October 1, 2015. At the hearing, the court stated its intention to grant Perez's petition "because Mr. Perez has priority." In response, Victor's counsel argued that Perez did not have priority because he was not actually married to Maria. He claimed that Perez was simply a boyfriend who "comes and goes." Perez denied that claim and stated that he had a marriage certificate that he could provide the court to prove the marriage. In an oral ruling, the trial court: (1) overruled the demurrer on grounds of lack of proper notice; (2)

granted Perez's petition; and (3) denied Victor's petition. The court asked Perez's counsel to give notice of the rulings and to file a copy of Perez's marriage certificate along with a proposed order on the demurrer.³

Victor subsequently filed various ex parte applications and motions asking the court to set aside its rulings and seeking to restrain Charchian from taking any action to administer Maria's estate. In those filings Victor reiterated his claim that Perez and Maria were not married and asserted that Perez "has no marriage certificate."

Perez submitted responses to Victor's filings along with a copy of a "License and Certificate of Marriage." The certificate, issued in 1992, identified the bride as Maria and the groom as "Ismael Perez Hernandez." Perez explained in an accompanying declaration that Ismael Perez Hernandez was his "birth name," but that during his marriage to Maria he "used the name Jorge Hernandez Perez on all legal documents, such as deeds, tax returns, and so forth." He also submitted: (1) excerpts of a federal tax return identifying him and Maria as "married filing jointly"; (2) a grant deed identifying Perez and Maria as "husband and wife"; and (3) a quitclaim deed from Perez to Maria identifying Perez as the "spouse of grantee."

The trial court denied Victor's motions following a hearing on December 29, 2015. Victor filed a motion for reconsideration, pointing out that the birth date on Perez's driver's licenses was different from the birth date listed on his marriage certificate. Perez filed a response in which he reiterated that his birth name

³ The record on appeal does not contain a copy of any written ruling, minute order, or notice of ruling from this hearing.

was on his marriage certificate. He explained that Jorge Hernandez Perez is his brother's name that he started using "to show that I was old enough to get a job." He admitted that the driver's licenses submitted with Victor's motion were the licenses that Perez used "here in California." Perez stated that his brother "has never entered the United States, and he agreed that I could use his name in the way that I have described here." Perez said, "I did not intend to deceive anyone by using the name Jorge Hernandez Perez."

Perez filed a certified copy of his marriage certificate on January 12, 2016. That same day the trial court issued an order appointing Charchian as Maria's personal representative.⁴

The trial court denied Victor's motion for reconsideration following a hearing on February 24, 2016.⁵

⁴ Victor appeals from this order, to which he objected. His appeal is authorized under section 1303, subdivision (a) and was timely filed on March 14, 2016. We therefore need not consider whether Victor's notice of appeal was timely with respect to the trial court's oral denial of his own petition on October 1, 2015.

⁵ On December 4, 2018, while this appeal was pending, Charchian sent a letter to this court requesting dismissal of the appeal on the ground that the case has been fully administered and a final order of distribution has been entered. The letter was accompanied by a copy of an order for final distribution dated November 14, 2018. Victor responded with a letter opposing dismissal, stating that he intends to pursue further remedies for alleged mismanagement of the estate. Neither party has explained why there was no stay in the trial court pending this appeal. (See § 1310, subd. (a).) In any event, in light of Victor's opposition to dismissal and the fact that further controversies apparently remain between the parties, we decline to dismiss this appeal as moot. (See *Los Angeles Internat. Charter High School*

DISCUSSION

1. Standard of Review

Both parties assert that the trial court's decision to appoint Charchian as Maria's personal representative should be reviewed under the abuse of discretion standard. However, neither party cites any authority applying that standard to the review of a trial court's appointment of a personal representative.⁶ We conclude that the abuse of discretion standard is not appropriate here.

Under the Probate Code, the trial court's decision to give Perez's petition priority over Victor's was not discretionary. A petition filed by a decedent's surviving spouse has statutory priority over a petition filed by the decedent's sibling. (§ 8461, subds. (a) & (f); *Estate of Garrett* (2008) 159 Cal.App.4th 831, 837 (*Garrett*) ["the surviving spouse is entitled to preference to letters of administration, unless he or she is shown incompetent on some statutory ground"].) Thus, if Perez is actually Maria's surviving spouse, the trial court was required to give priority to his petition.

v. Los Angeles Unified School Dist. (2012) 209 Cal.App.4th 1348, 1354 ["an exception to the mootness doctrine is the distinct possibility that the controversy between the parties may recur"].)

⁶ Victor cites an inapposite case applying the abuse of discretion standard to a trial court's decision declining to set aside an order confirming the sale of real property under Code of Civil Procedure section 473. (See *Estate of Lewy* (1976) 61 Cal.App.3d 635, 645.) Inexplicably, he also relies on irrelevant cases concerning decisions under the anti-SLAPP statute (Code Civ. Proc., § 425.16). (See *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 665–666; *Ketchum v. Moses* (2001) 24 Cal.4th 1122 (*Ketchum*).)

The question of whether Perez was legally married to Maria requires applying statutes to undisputed facts. It therefore presents an issue of law that we review de novo. (See *Garrett, supra*, 159 Cal.App.4th at p. 836 [whether the filing of a dissolution action that was later dismissed created an exception to a surviving spouse’s priority under section 8461 was a question of law].)

Regardless of the standard of review, it remains an appellant’s responsibility to provide an adequate record to support his or her claim of error. (*Ketchum, supra*, 24 Cal.4th at pp. 1140–1141.) “ ‘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.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, quoting 3 Witkin, Cal. Procedure (1954) Appeal, § 79, pp. 2238–2239.)

Here, Victor did not include in the appellate record a reporter’s transcript of the proceedings on December 29, 2015, and February 24, 2016, in which the trial court ruled on his various motions challenging Charchian’s appointment.⁷ No statement of reasons for the trial court’s ruling on those motions appears in the brief written orders in the record. Thus, the

⁷ Victor did augment the appellate record to include a reporter’s transcript from the original hearing on Victor’s objection to Charchian’s appointment on October 1, 2015. However, at that hearing the trial court did not yet have Perez’s certificate of marriage and therefore did not consider Victor’s arguments concerning the different name on that certificate.

record is silent concerning the basis for the trial court's decision. We therefore will affirm if the trial court's decision to appoint Charchian was correct on any ground. (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.)

2. Perez's Use of His Given Name on His Marriage Certificate Did Not Preclude Him From Proving His Marriage to Maria

Victor argues that Perez did not show he was married to Maria because the name on his marriage certificate is Ismael Perez Hernandez rather than Jorge Hernandez Perez. But Victor provided no evidence contradicting Perez's testimony that Ismael Perez Hernandez is the name Perez was given at birth. We therefore accept that fact on appeal, and decide its legal significance. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 74 [citing the "generally accepted proposition that the ultimate conclusion to be drawn from undisputed facts is a question of law for an appellate court"].)

In 1992, when the marriage certificate was issued, Civil Code section 4201 required that "[a]ll persons about to be joined in marriage" shall obtain a license showing: (1) the "identity of the parties"; (2) the "parties' real and full names, and places of residence"; and (3) the "parties' ages." (Stats. 1988, ch. 228, § 1.) Victor does not argue that a person's given name was not his or her "real" name for purposes of the law in effect at the time.⁸

⁸ Current law explicitly requires that parties to a marriage provide their given names for the marriage license. Family Code section 351 states that a marriage license shall show "[t]he parties' full given names at birth or by court order." (Fam. Code, § 351, subd. (b).)

Indeed, Victor acknowledges that “[i]t appears that the marriage certificate is valid because the person married to Maria . . . was Ismael Perez Hernandez.”⁹ He nevertheless argues that “Jorge Hernandez Perez has no marriage certificate showing that he is the spouse of the decedent.” Thus, although unclear, Victor apparently contends that the “Ismael Perez Hernandez” identified on the marriage certificate is a different person than Perez.

There is no evidence supporting such a contention. As mentioned, there is no evidence in the record contradicting Perez’s testimony that Ismael Perez Hernandez is his given name. Nor is there evidence suggesting that someone other than Perez obtained the marriage license with Maria. Perez’s use of an assumed name for other purposes did not magically transform him into a different person. Thus, we reject Victor’s argument that Perez failed to prove he was married to Maria.

3. Perez’s Use of His Assumed Name in Prosecuting His Petition Did Not Preclude Him From Asserting His Statutory Rights as Maria’s Husband

Victor also asserts that Perez’s petition was “invalid because Ismael Perez Hernandez has used his brother’s name

⁹ Thus, we need not consider Victor’s argument that providing an assumed name for a marriage license affects the legal validity of the marriage. The proposition is doubtful. (See Fam. Code, § 306 [“Noncompliance with this part by a nonparty to the marriage does not invalidate the marriage”]; *Argonaut Ins. Co. v. Industrial Acc. Com.* (1962) 204 Cal.App.2d 805, 810 [“We think that it is inconceivable that the Legislature intended to enact by inference a rule that the giving of incorrect names by the applicants for a license would make void the subsequent license and the marriage of the parties”].)

(Jorge Hernandez Perez) to petition for the administration of the estate of the decedent instead of his own name.”¹⁰ Victor is incorrect.

Perez filed his petition under the name that he has used for years. A person has a common law right in California to use a different name without the necessity of any legal proceeding. (*Lee v. Superior Court* (1992) 9 Cal.App.4th 510, 514; see Fam. Code, § 306.5, subd. (c) [“Nothing in this section [concerning a formal change of name by means of a marriage license] shall be construed to abrogate the common law right of any person to change his or her name”]; Code Civ. Proc., § 1279.5.)¹¹

Apart from this common law right, use of a fictitious name to seek relief in a legal proceeding does not necessarily deprive a party of standing to assert his or her rights. Code of Civil Procedure section 367 requires that actions “must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” However, the “question for purposes of standing is not the name used by the party suing but whether the party suing is the party possessing the right sued upon.” (*Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 765

¹⁰ On its face, this assertion is inconsistent with Victor’s apparent contention that Ismael Perez Hernandez is someone other than Perez. However, we interpret Victor’s claim as an argument in the alternative and consider it on the merits.

¹¹ The decision to use a different name is of course not the same as a decision to use a false birth date on legal documents or to appropriate someone else’s identity. While we do not condone such practices, they do not affect Perez’s right to assert his spousal rights in this case. We therefore do not consider Victor’s contention that Perez used his name fraudulently in other contexts.

(*Lincoln Unified*).) In *Lincoln Unified*, the plaintiff, a teacher who had been placed on sick leave, sued under a fictitious name to protect her privacy. The court rejected the defendants' argument that a plaintiff may not use a fictitious name, citing "countless published state court decisions where one or more of the parties have used fictitious names." (*Id.* at p. 766.) The court also noted that the defendants failed to present any argument as to why the use of a pseudonym by the plaintiff was inappropriate in the circumstances of that case. (*Id.* at p. 767.)

We similarly conclude that Perez's use of an assumed name to pursue his petition does not deprive him of the ability to assert his legal rights. He is the person who actually possesses "the right sued upon." (*Lincoln Unified, supra*, 188 Cal.App.4th at p. 765.) And here, as in *Lincoln Unified*, there has been no showing that Perez's use of an assumed name is unfair to the parties or to the court or is otherwise inappropriate under the circumstances of this case.¹²

¹² Victor does not contend, for example, that Perez has attempted to pass himself off as his brother in connection with this action, or that his brother filed the petition to assert rights that actually belong to Perez. Perez's filings candidly explain that he is acting on his own behalf and that he has simply used his brother's name for his own purposes.

DISPOSITION

The trial court's order appointing Charchian as the decedent's personal representative is affirmed. Respondent is entitled to his costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.