Filed 9/19/18 Conservatorship of D.P. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

Conservatorship of the Person and Estate of D.P.,	B284588 (Los Angeles County Super. Ct. No. ZE041308)
PUBLIC GUARDIAN OF THE COUNTY OF LOS ANGELES, Petitioner and Respondent, v. D.P., Objector and Appellant.	

APPEAL from an order of the Superior Court of the County of Los Angeles, Daniel Juarez, Judge. Affirmed.

Jean F. Matulis, under appointment by the Court of Appeal, for Objector and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Rosanne Wong, Assistant County Counsel, Jose Silva, Principal Deputy County Counsel, and William C. Sias, Deputy County Counsel, for Petitioner and Respondent.

I. INTRODUCTION

The Public Guardian of the County of Los Angeles (the County) filed a petition under the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5350 et seq. (LPS Act),[1] to be appointed the conservator of appellant D.P., alleging he was gravely disabled as a result of a mental disorder. The trial court found that D.P. was gravely disabled and appointed the County as conservator. Following a subsequent jury trial at which D.P. was also found to be gravely disabled, the trial court issued an order confirming the conservatorship.

On appeal from the order confirming the conservatorship, D.P. contends the trial court erred by failing to instruct the jury to begin deliberations anew after it replaced a juror with an alternate. D.P. also contends there was insufficient evidence to support the jury's finding that he was gravely disabled.

We hold that any error in instructing the jury after the substitution of the alternate juror was harmless and that the evidence was sufficient to support the jury's finding that D.P. was

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[1] The LPS Act governs the detention and treatment of persons who are gravely disabled by a mental disorder. All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

gravely disabled. We therefore affirm the order confirming the County's appointment as conservator.

II. BACKGROUND

A. *County Files Conservatorship Petition*

On April 6, 2017, the County filed against D.P. a petition for appointment of a LPS conservator and a request for a temporary conservator. That same day, the trial court entered an order appointing the County as temporary conservator and issued temporary letters of conservatorship.

B. *Bench Trial*

On April 25, 2017, the trial court held an evidentiary hearing on the County's conservatorship petition. D.P.'s treating psychiatrist, Dr. Bonnie Olson, testified for the County. D.P. testified on his own behalf. The trial court found that "the evidence establishe[d] grave disability beyond a reasonable doubt" and granted the petition for appointment of a conservator. The minute order for the hearing provided that the conservatorship would terminate on April 24, 2018.[2] D.P. then

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[2] Because the conservatorship was scheduled by court order to terminate on April 24, 2018, we asked the parties to submit letter briefs on whether the appeal was moot. In his letter, D.P. represented that a petition to reappoint the conservator had been filed by the County, but that the trial court proceedings on that petition had not yet been completed. D.P. also advised that he

demanded a jury trial and the trial court set the matter for a jury trial, which commenced on August 15, 2017.

C. *Jury Trial*

1. Dr. Mulokas's Testimony

Dr. Loreta Mulokas testified as the County's expert witness. Dr. Mulokas had been board certified in general and geriatric psychiatry for 20 years. Since 1988, she had evaluated over 3,000 psychiatric patients. In evaluating such patients, it was standard practice to use the Diagnostic and Statistical

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continues to be confined in the same facility involuntarily, presumably pursuant to a further court order.

On the merits of the mootness issue, D.P. contends that the case is not moot because: (1) D.P. has experienced a "stigma" and continues to suffer "collateral consequences" as a result of the conservatorship order under review, citing *Conservatorship of Carol K.* (2010) 188 Cal.App.4th 123,133 and *Conservatorship of Wilson* (1982) 137 Cal.App.3d 132, 136; and (2) the pending petition to reappoint the conservator requires the County to prove that he "remains" gravely disabled, such that the validity of any renewed conservatorship would depend on the validity of the original conservatorship order under review, citing section 5362 and *Conservatorship of Deidre B.* (2010) 180 Cal.App.4th 1306, 1312.)

Because the pending reappointment proceeding in the trial court may potentially be impacted by our decision of whether the original conservatorship order was supported by sufficient evidence, we address the merits of the appeal.

Manual of Mental Disorders or DSM,[3] which Dr. Mulokas described as the "[b]ible of psychiatry." At the time of trial, Dr. Mulokas worked at the "psychiatric locked unit" of the Veteran's Administration (VA) hospital in West Los Angeles.

The V.A. had initially admitted D.P. on a voluntary basis to a medical floor of the hospital in January 2017. On May 19, 2017, however, D.P. was admitted to Dr. Mulokas's unit due to "behavioral problems," which included "agitation, hostility, socially inappropriate behavior, urinating on the floor, blocking access to other patients' entrance . . . smearing feces and smearing urine." Dr. Mulokas explained that, at the time D.P. came to her unit, "[h]e was quite labile in his mood, angry, agitated, making accusations towards staff, getting angry at them, threatening [them] because . . . he wouldn't get what he want[ed] at that moment. . . . It [was] like a childish tantrum of a five-year old. And if he wouldn't get something [he wanted] he would urinate on the floor. He would [also] throw things and . . . would act out even towards the other patients in the unit. He wouldn't allow them to get into their rooms. And sometimes he would sit in the nursing station and block nurses [from entering] their station. [¶] . . . [¶] When he came to [Dr. Mulokas's] unit . . . for the first two weeks he had these episodes almost on a daily basis [but] eventually he improved."

Based on her observations and treatment of D.P. "for so many months," her review of his V.A. and outside medical records, and her discussions with the hospital treatment team, Dr. Mulokas concluded D.P. was currently suffering from a

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[3] The DSM defines and classifies mental disorders for purposes of diagnosis, treatment, and research. (See *McGee v. Bartow* (7th Cir. 2010) 593 F.3d 556, 574-576.)

mental disorder—"schizoaffective disorder of bipolar type." Among other symptoms, D.P. suffered from delusions and paranoia, believing "people [were] supposedly mistreating him intentionally." According to Dr. Mulokas, schizoaffective disorder was a mental illness described in the DSM.

Dr. Mulokas acknowledged that D.P.'s psychiatric symptoms had improved with treatment and medication, but noted that he still had periodic "episodes." She described D.P.'s current symptoms as follows: "[D.P.] is a very nice gentleman. He has a good soul and a good heart but [he] still has these episodes of mood lability and agitation. He improved with the medications but he still ha[d] . . . episodes of tantrums where he urinate[d] in a public place as [had] happened [the day before]. [¶] . . . [¶] Recently [he experienced these episodes] once a week. Sometimes once in two weeks." But Dr. Mulokas attributed D.P.'s improvement in symptoms to the medications he was taking for psychosis and depression. And, even though D.P. had been compliant in taking his psychiatric medications, Dr. Mulokas believed he still was gravely disabled by his medical disorder.

Dr. Mulokas explained that, although D.P. recognized his medications helped control the symptoms of his mental disorder, he otherwise had "limited insight" into his mental illness. And he gave no indication that "he would continue taking [the] medication on his own." Dr. Mulokas explained that psychiatric medications changed a patient's thinking. "But when people go on their own and especially if they don't have stable living conditions they fail to take medications on time. They postpone medications and sometimes when they realize that they didn't take their medication they might take double dose or triple dose

and that means they get to the point where they have difficulty taking medication safely and appropriately, and in that way psychiatric patients are at much higher risk to decompensate." Dr. Mulokas believed D.P. lacked sufficient insight to be a voluntary patient. She emphasized that while D.P. "[was] in the hospital he ha[d] good food, his bed [was] made, his clothes [were] washed. He ha[d] full 24/7 care, and . . . he also [received] proper medications, [and] timely treatment for his medical conditions . . . ." Dr. Mulokas opined that D.P. would not function well in a voluntary setting "[b]ecause of impulsivity . . . . He was given . . . the chance to be a voluntary [patient], to stay [at the hospital on a] voluntary [basis], but his behavioral problems [and] his noncompliance [with] the treatment caused [him] to be placed . . . [in Dr. Mulokas's psychiatric locked unit]."

In addition to his mental disorder, D.P. suffered from underlying medical issues that were "another concern" for Dr. Mulokas. These conditions included morbid obesity, metastatic prostate cancer that required close observation and proper treatment, hypertension, and high cholesterol.

According to Dr. Mulokas, D.P. "need[ed] to be in a medical setting where his medical [and psychiatric] treatment [could] be . . . provided [as well as] daily necessities." D.P. wanted to be placed in "a board and care home or a nursing home" where "on his own he [could] go out and go in and have some freedom," but Dr. Mulokas and her team could not "find any facility [that] would take him." The facilities that were willing to take him required that he have a conservator to act as a "surrogate decision-maker in case of his incapacitation." Although D.P. claimed that, if he was released "to the streets he [would] find a place to sleep," Dr. Mulokas did not believe that was a viable plan

because he had no income and "need[ed] close supervision and care of his medical and mental conditions."

Based on all the foregoing, Dr. Mulokas concluded that D.P. was "currently gravely disabled due to a mental disorder such that he need[ed] to be placed under a conservatorship . . . ."

2. D.P.'s Testimony

D.P. was the only other witness at trial. He did not agree that he had a mental condition or illness. He did believe, however, that he had a history of major depression.

His counsel asked D.P, "[i]f you were released from the conservatorship do you just want to go out in the street with nothing or are you willing to stay at the V.A. hospital until your treating team is able to locate a place for you to stay on a more long-term basis?"

D.P. responded, "[y]es, that's what I'm willing to do. Yes."

His counsel then asked, "[n]ow, let's talk about the psychiatric medications. If you are released and you go to, let's say, a skilled nursing facility, would you be willing to go to a skilled nursing facility?"

D.P. responded, "[y]es, I would be willing to go."

Counsel then asked, "[b]ut you don't want to go to one that's locked?"

D.P. responded, "[t]hat's correct."

On cross-examination, D.P. admitted that he had a schizoaffective disorder, but denied it was a mental illness. He believed his medications for the schizoaffective disorder were helpful and was willing to continue taking them.

If the conservatorship terminated, D.P. planned to go to a skilled nursing facility in Long Beach for psychiatric care and medications. He would work with his social worker to be placed in such a facility.

D.P. denied being homeless before he entered the V.A. facility, but admitted he lived on the "streets." He described the streets as his home and claimed that "whatever [he] needed was in the streets."

D.P. explained he was receiving $800 a month in financial aid from the state, but that it had "been cut" because all of his needs were being met in the V.A. hospital. He believed, however, that if he were released from the conservatorship, his state financial aid would be restored. He also believed his financial aid was enough for his basic needs and that it would fund the skilled nursing facility he planned on entering.

3. Juror Deliberations and Selection of Alternate

On August 16, 2017, the court instructed the jury and counsel delivered arguments. Just prior to sending the jury to deliberate, the trial court advised the jury as follows: "We had estimated three days so the expectation I hope from each of you would be that we'd come back tomorrow. And I think you can at the very least today . . . choose a foreperson, you can begin those discussions, but if you do not come to a verdict by 4:25 [p.m.], that's expected. That's normal. And we'll come back tomorrow and obviously tomorrow would be just a day of you deliberating."

The jury began deliberations at 3:59 p.m. At 4:27 p.m., the trial court addressed the jurors and advised them concerning the next day's schedule: "I'm going to order you back for tomorrow at

1:30 [p.m.] to continue your deliberations. [¶] . . . [¶] Tomorrow when you come back, once all of you are together and the bailiff reaches you, we won't have to reconvene here. He's going to direct you straight into the room. [¶] . . . [¶] So once you are here you can go straight in to deliberate. [¶] The alternates, I'll have you come in and just check in with the bailiff. He'll take note that you are here. But, again, *we can't start until you are all here* so please make sure to be as timely as you have been all these days. Tomorrow should end it for you all." (Italics added.)

The next day, "[a]t 1:37 p.m. the jury immediately resume[d] deliberations." Two minutes later, however, outside the presence of "the jury, alternates, [a]ttorneys and [D.P.], the [trial court was] informed that [only] eleven jurors retire[d] to deliberate and one [did] not appear." At 2:17 p.m., the trial court addressed the jury and counsel concerning the failure of juror number five to appear for deliberations: "The court notes we have counsel for each party present, [D.P.] is present, and the jury with the exception of [juror number] 5 is present, including our alternates. [¶] And, ladies and gentlemen of the jury, I know that you were here promptly and we had the bailiff escort you into the deliberation room for you to begin your deliberations today. [¶] And as I'm sure you're aware, we're missing juror [number] 5. We were giving some time to see if juror [number] 5 would appear. [¶] The court is going to at this time find that juror [number] 5 is missing for purposes of this last day of jury trial for deliberations. On that basis, at this time I've discussed this with counsel and we're going to impanel our alternate [juror number] 1 . . . . [¶] Ma'am, I'm going to ask you . . . to sit as a member of the jury and you're going to deliberate with the jury to reach a verdict here today, okay. [¶] . . . [¶] All right. With that,

I'm going to ask [alternate juror number 1] to join you. You will be sent back to the jury room for deliberations and *now with your twelfth person you can begin*. I'm sorry for the wait." (Italics added.)

The jury then retired to deliberate at 2:20 p.m. and, at 3:25 p.m., it returned its verdict, finding that D.P. was "presently gravely disabled due to a mental disorder." After polling the jury and receiving 12 affirmative responses, the trial court thanked and excused the jury. Based on the verdict, the trial court ordered that "the conservatorship is . . . to continue under the same powers and disabilities as previously set forth."

On August 18, 2017, D.P. filed a notice of appeal from the trial court's August 17, 2017, order confirming the conservatorship.

III. DISCUSSION

A. *Any Error in Failing to Instruct on Renewed Deliberations was Harmless*

D.P. contends the trial court erred by failing to instruct the jury to begin deliberations anew after it replaced one of the original jurors with an alternate. Neither party requested such an instruction. Noting that he had a right to a unanimous jury verdict under the LPS Act, D.P. argues that implicit in that right "is the right to proper instruction on the subject." The County contends that no such instructions were necessary because proceedings under the LPS Act are civil in nature and thus governed by civil trial rules, which do not require the trial court to sua sponte instruct the jurors to begin deliberations anew.

We will assume that once the trial court decided to replace one of the original jurors, it had a sua sponte duty to instruct the jury to begin their deliberations anew.[4] (*People v. Collins* (1976) 17 Cal.3d 687, 694.) "The requirement that 12 persons reach a unanimous verdict is not met unless those 12 reach their consensus through deliberations which are the common experience of all of them. It is not enough that 12 jurors reach a unanimous verdict if 1 juror has not had the benefit of the deliberations of the other 11." (*Id.* at p. 693; *Griesel v. Dart Industries, Inc.* (1979) 23 Cal.3d 578, 584 [applying *People v. Collins*'s requirement of jury instruction upon substitution of alternate, to civil proceedings].)

We review the error under the prejudicial error test set forth in *People v. Watson* (1956) 46 Cal.2d 818. (*People v. Collins, supra*, 17 Cal.3d at p. 697.) Under *Watson*, a trial court error "requires reversal of a conviction if, taking into account the entire record, it appears '"' reasonably probable"'" the defendant would

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[4] CALCRIM No. 3575 provides: "One of your fellow jurors has been excused and an alternate juror has been selected to join the jury. [¶] Do not consider this substitution for any purpose. [¶] The alternate juror must participate fully in the deliberations that lead to any verdict. The People and the defendant[] have the right to a verdict reached only after full participation of the jurors whose votes determine that verdict. This right will only be assured if you begin your deliberations again, from the beginning. Therefore, you must set aside and disregard all past deliberations and begin your deliberations all over again. Each of you must disregard the earlier deliberations and decide this case as if those earlier deliberations had not taken place. [¶] Now, please return to the jury room and start your deliberations from the beginning."

CACI No. 5014 is nearly identical; it replaces "The People and the defendant[]" with "The parties."

have obtained a more favorable outcome had the error not occurred." (*People v. Ledesma* (2006) 39 Cal.4th 641, 716.) "'In determining whether *Collins* error was prejudicial, we may consider whether the case is a close one and compare the time the jury spent deliberating before and after the substitution of the alternate juror. [Citations].' (*People v. Proctor* (1992) 4 Cal.4th 499, 537 . . . .)" (*People v. Guillen* (2014) 227 Cal.App.4th 934, 1031.)

D.P.'s main argument regarding prejudice is that, in his view, the evidence regarding his willingness to voluntarily accept treatment was close. D.P. points out that he had voluntarily checked himself into the hospital and testified that he was willing to stay in the hospital until his treating team was able to locate a place for him to stay on a more long-term basis.

As an initial matter, there is a split in authority as to whether the County was required to prove that D.P. was "unwilling or unable of voluntarily . . . accept[ing] . . . treatment," as this language does not appear in the LPS Act's definition of "gravely disabled." (§ 5008, subd. (h)(1)(A) [defining "'gravely disabled'" as "[a] condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter"].) (See *Conservatorship of Early* (1983) 35 Cal.3d 244, 256 [declining to reach the issue of whether trial court erred in refusing appellant's requested instruction that appellant was not gravely disabled if he voluntarily accepted treatment]; compare *Conservatorship of Symington* (1989) 209 Cal.App.3d 1464, 1467 ["we doubt a finding that the proposed conservatee is unable or unwilling to accept treatment is necessary under the statutory scheme"]; with *Conservatorship of Davis* (1981) 124 Cal.App.3d

313, 322-323 [concluding trial court properly instructed jury that it must find conservatee was gravely disabled as a result of mental disorder and was unwilling or incapable of accepting treatment voluntarily].) We need not address this split in authority. The trial court instructed the jury that the County had the burden of proving beyond a reasonable doubt, "[t]hat [D.P.] [was] unwilling or unable voluntarily to accept meaningful treatment." The jury, by its verdict, found that the County had proved this element beyond a reasonable doubt.

In any event and contrary to D.P.'s argument, the evidence that D.P. was gravely disabled, as defined by the trial court, was not close. Dr. Mulokas, an experienced, board certified psychiatrist, had treated D.P. for several months before her testimony and, based on her own observations, her review of D.P.'s medical records, and her consultation with D.P.'s treatment team at the V.A. hospital, she concluded that D.P. had a mental disorder—schizoaffective disorder, bipolar type—that rendered him gravely disabled. She opined that based on his mental disorder, D.P. was unable to provide for his personal needs for food, clothing, and shelter. In her opinion, he would not be able to provide for those needs in the voluntary nursing home setting he desired. Instead, those needs would only be addressed in a locked down setting with D.P. under the control of a conservator. Among other things, Dr. Mulokas believed—based in part on D.P.'s failure to function in the V.A.'s voluntary setting—that D.P. lacked sufficient insight into his mental disorder to be able to continue voluntarily to take the psychiatric medications he needed to control his frequent psychotic episodes. She also believed, based on her years of experience, that psychiatric patients, like D.P., had a higher risk than did other

medical patients of decompensating, particularly if they lacked stable living conditions.

Although D.P. testified that he would continue to take his medications and voluntarily seek necessary medical treatment, such testimony only supported D.P.'s contention that he was *willing* to accept treatment voluntarily, not that he was *able* to do so. (See *Conservatorship of Davis*, *supra*, 124 Cal.App.3d at p. 325 [trier of fact must consider "willingness and capability of the proposed conservatee to voluntarily accept treatment" (emphasis added)]). Given the relative strength of the County's evidence, that is, Dr. Mulokas's expert opinion, based on her training, years of experience, months-long treatment of D.P., and D.P's prior conduct, that D.P. was unable to continue taking medication on his own, as compared to D.P.'s testimony about what he was willing to do, the evidence before the jury was not close, and therefore does not support a finding of prejudice.

Similarly, the length of the jury deliberations demonstrates there was no prejudice. The record shows that on the first day of deliberations, the original jurors deliberated for less than a half hour, which, by the trial court's estimate, may only have been enough time to select a foreperson. The next day, 11 of the 12 jurors timely assembled to deliberate but, within two minutes, the trial court was informed that juror number five was absent from the deliberations. Given the trial court's repeated instruction to the jury to not discuss the facts of the case unless all 12 jurors were present, it is not likely that any significant substantive deliberations took place prior to the trial court addressing the jury and replacing juror number five with alternate juror number one. And, after the trial court replaced the absent juror, it advised the newly constituted jury that "now

with your twelfth person you can begin [deliberations]." The jury then returned the unanimous verdict an hour later.

Given the circumstances surrounding, and the timing of, the replacement of the absent juror, it was not reasonably probable that the jury would have returned a more favorable verdict if it had been explicitly instructed to begin deliberations anew. Based on the record of the deliberations, it is not reasonably probable that significant deliberations on the merits took place prior to the substitution of the alternate juror. We therefore conclude that the claimed instructional error was not prejudicial.

B. *Substantial Evidence*

D.P. contends there was insufficient evidence to support the jury's finding that he was gravely disabled. We review D.P.'s claims for substantial evidence. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60; *Conservatorship of Isaac O.* (1987) 190 Cal.App.3d 50, 57.) "An appellate court reviews the trial court's factual findings to determine if there is substantial evidence to support them, and will sustain the trial court's factual findings if there is substantial evidence to support those findings, even if there exists evidence to the contrary. (*Conservatorship of Isaac O.*[, *supra*,] 190 Cal.App.3d [at p.] 57 . . . .) 'In making th[e] determination [regarding substantial evidence], we view the entire record in the light most favorable to the trial court's findings. [Citations.] We must resolve all conflicts in the evidence and draw all reasonable inferences in favor of the findings. [Citation.] Substantial evidence is evidence of ponderable legal significance. [Citations.]' (*Conservatorship of*

Ramirez (2001) 90 Cal.App.4th 390, 401.)" (*Conservatorship of Amanda B.* (2007) 149 Cal.App.4th 342, 347-348.)

D.P. asserts that, in conservatorship cases, "[d]ue [p]rocess" requires that the sufficiency of the evidence be assessed according to a 'stricter criminal standard . . . .' To the extent D.P. is suggesting that the definition of substantial evidence, and the inferences and presumptions to which that evidence is entitled, differ between criminal and civil cases, we disagree. (See *People v. Bassett* (1968) 69 Cal.2d 122, 139 [discussing substantial evidence standard in civil cases, and concluding that "[t]he same standards control, *a fortiori*, when it is a criminal judgment which is challenged on the ground of insufficiency of the evidence. In resolving that contention the appellate court is required to determine whether a reasonable trier of fact could have found that the prosecution sustained its burden of proving the defendant guilty beyond a reasonable doubt"].)

D.P. contends that there was insufficient evidence "particularly with respect [to his] willingness and ability to voluntarily accept treatment." It is well established that an expert opinion is substantial evidence if it is supported by facts and a reasoned explanation of how those facts inform the opinion. (*San Diego Gas & Electric Co. v. Schmidt* (2014) 228 Cal.App.4th 1280, 1292, citing *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) Here, Dr. Mulokas testified that in her opinion, D.P. was gravely disabled and was unable to voluntarily accept treatment. She further testified that her opinion was based on her training, experience, and months-long treatment of D.P. As we explained above, this was not a close case. For the reasons we conclude that any error in the court's failure to instruct the jurors to begin their

deliberations anew was harmless, we also conclude substantial evidence supported the jury's verdict that D.P. was gravely disabled beyond a reasonable doubt.

C. *Court and Jury Trial*

In its respondent's brief, the County purports to take issue with the trial court procedure in this case, pursuant to which D.P. was afforded a jury trial after the trial court had already found him gravely disabled beyond a reasonable doubt. Citing section 5350, subdivision (d) and *Conservatorship of Kevin M.* (1996) 49 Cal.App.4th 79, the County maintains that the jury trial in this case was unauthorized.

"As a general matter, 'a respondent who has not appealed from the judgment may not urge error on appeal.'" (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) "'To obtain affirmative relief by way of appeal, respondents must themselves file a notice of appeal and become cross-appellants.' (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 8:195, p. 8-155.)" (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 585.)

The County did not file a cross-appeal seeking affirmative relief based on this issue. Therefore, it cannot in its respondent's brief seek to adjudicate the propriety of the procedure employed by the trial court that afforded D.P. a jury trial after he already had the benefit of a court trial.

IV. DISPOSITION

The order of the trial court confirming the order of conservatorship is affirmed. No costs are awarded on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.