

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LATTICE ARMSTEAD et al.,

Plaintiffs and Appellants,

v.

CAROLYN WEBB DE MACIAS,

Defendant and Respondent.

B284275

(Los Angeles County
Super. Ct. No. BP160792)

APPEAL from an order of the Superior Court of Los Angeles County, William Barry, Judge. Affirmed.

Lattice Armstead and Myra Quinn, in pro. per., for Plaintiffs and Appellants.

Carolyn Webb de Macias, in pro. per., for Defendant and Respondent.

Lattice Armstead and Myra Quinn (collectively, “appellants”) filed a petition to compel an accounting and court review of the actions of respondent Carolyn Webb de Macias, the trustee of appellants’ mother’s estate. The trial court denied the petition and assessed attorney fees and costs. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Gloria Banks created the Gloria J. Banks trust on June 24, 2013, three days before her death. The trust, which was prepared by attorney Marlene Cooper, named respondent as successor trustee, Jean R. Banks (Jean) and Quinn as alternate co-successor trustees, and Karen A. Banks (Karen) as second alternate successor trustee.¹ Following Banks’ death, respondent, acting as successor trustee, was to pay Banks’ debts, including funeral expenses, and distribute the net proceeds to Banks’ five children (Jean, Karen, Samuel Banks, Quinn, and Armstead) in equal shares. The trust gave the trustee the power to sell trust property, including real property. The trust further provided that the trustee had the power, after Banks’ death, “to sell such property as the trustee(s) consider necessary” to make any division or distribution of the trust estate. The sole piece of real property in the trust was a house on Roxton Avenue in Los Angeles (the property).

¹ We will refer to the beneficiaries who share a common last name by their first names. We do so as a matter of convenience and mean no disrespect in doing so.

In March 2015, appellants filed a petition under Probate Code section 17200² for court review of respondent's actions as trustee and an accounting regarding their mother's trust. The petition alleged that respondent and attorney Cooper committed breach of trust in numerous ways, including the following: (1) failing to adhere to the terms of the trust by attempting to deed the property to a single beneficiary, Jean; (2) attempting to coerce appellants into signing forms to relieve respondent and Cooper of liability; (3) failing to secure trust assets and illegally gifting trust assets to favored beneficiaries; (4) violating section 16064 by failing to provide accountings in 2013 and 2014; (5) failing to provide receipts to validate disbursements; (6) commingling trust accounts with non-trust accounts; (7) selling the property to Jean in violation of the trust's instruction to distribute all assets equally among the five children and in retaliation for appellants' refusal to approve a proposal to deed the property to Jean; and (8) illegally gifting trust assets of an electric wheelchair and a cemetery plot.

On November 5, 2015, respondent filed a petition for settlement of the account of her administration of the trust and for approval of trustee fees and attorney fees. Appellants objected to the petition. On April 11, 2016, appellants filed a petition for attorney fees and costs. In July 2016, the court granted respondent's motion for an order compelling appellants to disgorge the \$1,641.11 distribution they each

² Unspecified statutory references will be to the Probate Code.

had received from the trust in order to fund respondent's defense of her actions as trustee.

On February 21, 2017, the court held a bench trial. We discuss the evidence as relevant to the contentions on appeal in our Discussion section, below. The court reasoned that a trustee "is not responsible for making a choice that, in hindsight, was not the best option," but instead is required to act reasonably, impartially, and in accordance with the terms of the trust. Because there was no evidence that the five beneficiaries agreed on how to manage the property, the court found that respondent's decision to sell the property was reasonable under the circumstances. The court thus denied without prejudice appellants' petition to compel an accounting and their petition for fees, costs, and damages. The court declined to approve respondent's accounting and ordered her to file a supplemental accounting that would include the assets of the burial plot and the wheelchair by March 1, 2017.

On April 13, 2017, the trial court granted in part respondent's petition, awarding trustee fees of \$5000 and attorney fees of \$2675, and overruling appellant's objections. The court found that additional evidence was required and thus continued the matter.

On May 30, 2017, the court found that appellants' petition for an accounting was filed in bad faith and without reasonable cause. The court allowed respondent's attorney fees of \$19,125 and costs of \$537.94 under section 17211. Appellants filed a notice of appeal.³

³ "The appealability of probate disputes in general is governed by section 1300. [Citations.] In addition, section 1304 lists appealable

DISCUSSION

Appellants represent themselves on appeal. Their opening brief is difficult to follow, but in substance they seek to overturn the denial of their petition and the award of attorney fees, arguing that their petition benefitted the trust by leading to a proper accounting and the return of assets to the trust. Our review is further hampered because respondent's brief (respondent, too, is in pro. per.) fails to provide any citations to the record, in violation of California Rules of Court, rule 8.204(a)(1)(C). Despite these difficulties, we consider the parties' arguments on the merits.

I. *Legal Framework*

"The Probate Code sets forth the duties of a trustee administering a trust and the measure of liability for breach of those duties. Those duties include, among others, a duty of loyalty, requiring the trustee to administer the trust solely in the interest of the beneficiaries (§ 16002, subd. (a)) . . . and a duty to exercise reasonable care, skill, and prudence in administering the trust (§§ 16040, subd. (a), 16047) A trustee

orders in trust proceedings. [Citation.]" (*Kalenian v. Insen* (2014) 225 Cal.App.4th 569, 575–576.) An order "[f]ixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney" is appealable. (§ 1300, subd. (e).) "An appeal also lies from any final order rendered under section 17200, with exceptions inapplicable here. (§ 1304, subd. (a).)" (*Leader v. Cords* (2010) 182 Cal.App.4th 1588, 1595.)

also has a fiduciary duty to act in good faith in the exercise of any discretionary powers conferred on the trustee by the trust instrument. (§ 16081, subd. (a).) A trustee's violation of any duty owed to the beneficiaries is a breach of trust. (§ 16400.)" (*Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 888 (*Uzyel*).)

A trustee further "must deal impartially with all beneficiaries. (§ 16003.) If a trustee is given discretionary power, the trustee must exercise his or her power reasonably. (§ 16080.) Even if a trustee is given 'sole' and 'absolute' discretion, he or she must act in accordance with fiduciary principles and must not act in bad faith or in disregard of the purposes of the trust. (§ 16081, subd. (a).)" (*Penny v. Wilson* (2004) 123 Cal.App.4th 596, 603 (*Penny*).)

"In order to plead a cause of action for breach of fiduciary duty against a trustee, the plaintiff must show the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach; the absence of any one of these elements is fatal to the cause of action. [Citation.] The beneficiary of the trust has the initial burden of proving the existence of a fiduciary duty and the trustee's failure to perform it; the burden then shifts to the trustee to justify its actions. [Citation.]" (*LaMonte v. Sanwa Bank California* (1996) 45 Cal.App.4th 509, 517 (*LaMonte*).)

"We use the substantial evidence standard of review to review a judgment based on the trial court's determination of disputed factual issues. [Citation.]" (*Penny, supra*, 123 Cal.App.4th at p. 603.) ""Under the substantial evidence standard of review, 'we must consider all of the

evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.] [¶] It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted, in support of the judgment.” [Citation.]” (*Scott v. McDonald* (2018) 26 Cal.App.5th 463, 478-479.) ““A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.” [Citation.]” (*Powell v. Tagami* (2018) 26 Cal.App.5th 219, 231 (*Powell*).)

II. *Analysis*

Appellants contend that respondent breached her fiduciary duty in the following ways: (1) she failed to provide an accounting when requested and commingled trust accounts with non-trust accounts; (2) she acted in bad faith by pressuring them to sign a waiver form; (3) she breached her duty to act impartially on behalf of all beneficiaries by attempting to deed the property to Jean; and (4) she failed to consider options, such as renting the property or negotiating with creditors who had offered to settle a debt for a lowered amount. Appellants further contend the trial court erred in approving respondent’s attorney fees and in finding that they did not suffer loss as a result of the sale of the property, commingled accounts, missing assets, and the delay in providing an accounting.

A. *Denial of Section 17200 Petition*

1. *Accounting and Commingling*⁴

Section 17200 authorizes a beneficiary of a trust to petition the court “concerning the internal affairs of the trust.” (§ 17200, subd. (a); *Babbitt v. Superior Court* (2016) 246 Cal.App.4th 1135, 1141 (*Babbitt*).) “Proceedings concerning the internal affairs of a trust include . . . [¶] . . . [¶] (7) Compelling the trustee to . . . [¶] (B) Provide information about the trust under Section 16061 if the trustee has failed to provide the requested information within 60 days after the beneficiary’s reasonable written request. . . . [¶] (C) Account to the beneficiary, subject to the provisions of Section 16064, if the trustee has failed to submit a requested account within 60 days after written request of the beneficiary and no account has been made within six months preceding the request.” (§ 17200, subd. (b).) “[T]he term ‘internal affairs of the trust’ includes information relevant to the beneficiary’s interests, information necessary to enforce the beneficiary’s rights, and information that could prevent or redress a breach of trust.” (*Babbitt, supra*, 246 Cal.App.4th at p. 1145.)

“Section 16060 provides: ‘The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.’ The California Law Revision Commission comment to section 16060 explains, ‘The trustee is under a duty to communicate to

⁴ Respondent’s brief does not address appellants’ contentions regarding her alleged failure to respond to their requests for information and the alleged commingling.

the beneficiary information that is reasonably necessary to enable the beneficiary to enforce the beneficiary's rights under the trust or prevent or redress a breach of trust.' [Citation.] This duty is 'consistent with the duty stated in prior California case law to give beneficiaries complete and accurate information relative to the administration of a trust when requested at reasonable times.' [Citation.]" (*Salter v. Lerner* (2009) 176 Cal.App.4th 1184, 1187–1188.)

Section 16061 provides that, "on reasonable request by a beneficiary, the trustee shall report to the beneficiary by providing requested information to the beneficiary relating to the administration of the trust relevant to the beneficiary's interest." In addition, subject to certain exceptions not applicable here, section 16062 requires a trustee to "account at least annually, at the termination of the trust, and upon a change of trustee, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed." (§ 16062, subd. (a).)

The evidence presented at the bench trial on the petition showed that on May 23, 2014, Armstead requested an updated accounting from respondent regarding the property. She stated that respondent's previous accounting was based on "guestimates" regarding sale price, commissions, tax arrearages, and debts, and asked for an update because the precise figures were available.

Respondent provided an accounting on September 10, 2014. However, on October 31, 2014, Quinn wrote that respondent's "list of debits and credits from multiple checking accounts" was not a final trust accounting. She asked for further information, including a

correction of the net revenue estimate based on errors identified by Armstead, a final statement for the sale of the property, a final accounting of the disposition of a motorized wheelchair and a cemetery plot, reimbursements to creditors, payments to respondent and Cooper, and taxes.

On January 17, 2015, Armstead wrote to respondent reiterating the request for an accounting and asking for information such as statements of bank accounts and invoices or receipts regarding household and numerous other expenses, including the services of the trustee and legal counsel. Respondent replied on March 3, 2015, with a letter and a final accounting to all five beneficiaries.

The record supports the trial court's conclusion that respondent complied with the Probate Code's requirements to provide an accounting to appellants. It is true that the trial court ordered respondent to file a supplemental accounting that included the burial plot and the wheelchair. However, once she did so, the court approved the accounting. Appellants have not met their burden of showing that "the court abused its discretion or that the order was not supported by substantial evidence. [Citations.]" (*Guardianship of K.S.* (2009) 177 Cal.App.4th 1525, 1530; accord *Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1011 ["The appellant has the burden of showing the finding or order is not supported by substantial evidence."].)

As to commingling, when the trial court asked appellants for evidence to support this claim, appellants' counsel cited "a confusion" regarding a payment for a second property appraisal conducted before the date of death. He pointed out that "the accounting is in two parts.

One covers the actual trust checking account and the other covers the activities from the other checking accounts by the beneficiaries on behalf of the trust.” Appellants’ counsel cited a deposit of \$11,612.23 from Karen in July 2013 into “other accounts.” He argued that this activity predated the “filed accounting” from the trustee, which started in September 2013. Counsel’s reasoning is difficult to follow, and the court’s decision not to credit counsel’s speculation as to the significance of a single deposit entry was reasonable. Without more, it was insufficient to show that respondent, in breach of her fiduciary duty, commingled trust funds with other funds to appellants’ prejudice. “It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility. [Citation.]” (*Powell, supra*, 26 Cal.App.5th at p. 231.) Appellants have not pointed to any other evidence to establish that the court’s finding was erroneous.

2. *Waiver Form*

Appellants contend respondent breached her fiduciary duty by pressuring them to sign forms waiving potential claims against respondent. Appellants rely on *Estate of Gump* (1991) 1 Cal.App.4th 582 (*Gump*), which held that the trustee’s “attempt to pressure the beneficiaries into dropping their contests and objections” constituted “a knowing breach of trust, as well as a breach of its duty of loyalty. [Citations.]” (*Id.* at p. 596, citing § 16002, subd. (a).)

In the present case, the evidence showed that on August 4, 2014, respondent mailed Armstead a copy of the accounting for the trust,

instructing her that she had 180 days to object to the accounting.⁵ Respondent also enclosed a distribution check for \$1,641.11, representing Armstead's share of the trust, and asked Armstead to return a receipt acknowledging her receipt of the distribution check.

On September 10, 2014, respondent sent another letter to Armstead, stating that because Armstead did not accept the prior package, respondent had removed the distribution check and instead enclosed a release and waiver form for Armstead to sign and return, releasing respondent and Cooper from liability or accountability regarding their administration of the trust. Respondent stated that Armstead needed to sign the form in order to receive her distribution check.

On October 13, 2014, Cooper sent another letter, telling Armstead that "The Release and Waiver form is required in order for you to receive your portion of the net proceeds. The form waives further claims against [respondent] and me, as her attorney, regarding her management of the Trust and her accounting." Cooper wrote that, if the waiver form was not signed and returned, respondent would be forced to file a petition with the court, which would cost approximately \$2,500, to be paid from trust assets.

Based on the evidence here, appellants' reliance on *Gump* is unfounded. In *Gump*, the trustee, Wells Fargo, told the beneficiaries an

⁵ The letter is dated August 4, 2013, but it states that the accounting covers the period from June 27, 2013 through May 31, 2014. The year accordingly is probably an error.

audit costing \$10,000 was required to resolve problems with a lease. However, the record contained “ample evidence . . . that the audit was primarily motivated by its anticipated utility in . . . civil litigation.” (*Gump, supra*, 1 Cal.App.4th at p. 594.) In addition to the substantial evidence of Wells Fargo’s negligent and intentional breaches of trust and fiduciary duty,⁶ there was also evidence that Wells Fargo “improperly threatened the audit . . . ‘in an attempt to cover up Wells Fargo’s maladministration’” of the trust, “in an effort to shift Wells Fargo’s litigation costs to the objecting beneficiaries,” and to pressure the objecting beneficiaries into dropping their objections. (*Ibid.*)

Unlike *Gump*, there is no evidence that respondent’s request for the waiver form was an improper threat to cover up maladministration of the trust. Instead, by seeking to avoid paying \$2,500 to file a petition, it was a reasonable attempt to protect the trust assets. Moreover, even were we to conclude that respondent did improperly

⁶ For example, the beneficiaries’ accountant “testified that numerous errors were found in . . . statements,” and that the trustee “failed to detect, acknowledge or remedy miscalculations” of income, despite objections by the beneficiaries. (*Gump, supra*, 1 Cal.App.4th at p. 591.) A Wells Fargo employee testified that she and her supervisor did not have the skills or ability to analyze records for which they were responsible. Nonetheless, neither “took any action to obtain the advice or assistance of an accountant or other qualified expert to review the records . . . after the beneficiaries questioned the . . . statements.” (*Id.* at p. 592.) The beneficiaries also presented expert testimony that “the conduct of the trust administrators . . . was ‘highly unprofessional’ and fell below the standard of care for professional trust managers.” (*Id.* at p. 594.)

pressure appellants to sign the waiver form (we do not), appellants do not provide any evidence to show that they suffered any damage from that alleged threat.⁷ (*LaMonte, supra*, 45 Cal.App.4th at p. 517.)

3. *Deeding the Property to One Beneficiary*

Appellants contend respondent breached her duty to “deal impartially with” all beneficiaries by attempting to deed the property to a sole beneficiary, Jean. (§ 16003.) The evidence at trial shows that respondent’s email setting forth the proposal to deed the property to Jean explained that she believed this option would result in the greatest distribution to all five beneficiaries. Appellants have not presented any evidence to contradict this assertion. Moreover, respondent ultimately rejected this option in favor of selling the property. Appellants have not established that this conduct was a breach of fiduciary duty.

4. *Consideration of Other Options*

Appellants take issue with respondent’s refusal to consider options other than selling the property. The record indicates that, once respondent decided to sell the property, she refused to consider the other options proposed by appellants. Nonetheless, the record further

⁷ In addition, we note that in her respondent’s brief, respondent states that she eventually distributed the checks to appellants without receiving the waiver forms (she does not provide a citation to the record to support the assertion). Appellants do not point to any evidence in the record to dispute this assertion or establish that they suffered damages.

indicates that respondent had considered the option of allowing Jean to purchase the property, but eventually decided that selling the property would result in the greatest benefit to the trust. Respondent's decision not to reconsider options that she already had rejected in favor of the option she believed was best for the trust was an appropriate exercise of her discretion. (See *Penny, supra*, 123 Cal.App.4th at p. 603 [trustee given discretion must act in accordance with fiduciary principles].) We further note that the trust explicitly gave respondent the power to sell the property. Appellants have not met their burden of establishing error.

B. *Attorney Fees under Section 17211*

The trial court found that appellants' petition was brought in bad faith and therefore awarded respondent her attorney fees. We affirm this finding.

Section 17211 provides in pertinent part: "If a beneficiary contests the trustee's account and the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the compensation and costs of the trustee and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The amount awarded shall be a charge against any interest of the beneficiary in the trust. The contestant shall be personally liable for any amount that remains unsatisfied." (§ 17211, subd. (a).)

"Bad faith involves a subjective determination of the contesting party's state of mind—specifically, whether he or she acted with an

improper purpose. [Citations.] “A subjective state of mind will rarely be susceptible of direct proof; usually the trial court will be required to infer it from circumstantial evidence.” [Citation.] We review a finding of bad faith under the deferential substantial evidence standard. [Citation.]” (*Powell, supra*, 26 Cal.App.5th at p. 234.)

The trial court found that appellants were “displeased with how the Trust assets were handled, but they had no reasonable basis for their opinions.” This finding is supported by substantial evidence.

The record shows that, before respondent decided to sell the property, she corresponded frequently with all five beneficiaries, expressing her understanding that their mother wanted to keep the home “in the family,’ if possible,” and that the five beneficiaries were discussing whether to sell the property or allow Jean to purchase it. Respondent communicated with the beneficiaries about different options as she considered them. For example, in September 2013, she stated that she had decided to sell the property, but two months later she expressed hesitancy because selling would yield only \$20,000-\$25,000 after liabilities were paid. Respondent later considered transferring the property to Jean as a more financially viable option. Finally, on December 6, 2013, respondent let the beneficiaries know that she was going to sell the property because there was no money to pay the monthly upkeep.

Respondent presented declarations from the other three beneficiaries that support her decision to sell and her other actions administering the trust. For example, Samuel’s declaration stated that initially he was “the only one advocating for all of us siblings to

maintain and rent the property, but we never all agreed to this. My sister Jean was willing to purchase, just to keep the property ‘in the family,’ but this was never agreed to, either.” Samuel further stated that all the siblings agreed that Jean should do the accounting work for the trust because “she had assisted [Banks] with numerous tax and financial transactions throughout the years” and thus already had “extensive knowledge of [her] financial affairs.” Samuel disputed appellants’ assertion that the burial plot had “substantial value on the open market” and stated that he and Jean wanted it to be given to Karen because she had shared insurance proceeds with them.

Jean, an accountant by trade, declared that she had assisted her mother with her financial affairs for many years. She detailed the accounting work she performed on behalf of the trust and denied receiving preferential treatment in exchange for her services, stating that she received a distribution of the same value as her siblings. Jean stated that the suggestion that the home could have been kept by the five beneficiaries “was rejected by a majority of the beneficiaries from the outset. No one had contributed funds to prepare the property for rental or to continue paying the mortgage, taxes, and insurance.” The trustee’s plan to sell the property to Jean was not agreed to, so the property was sold.

Karen stated that Samuel was the only one who “initially advocated for all of us siblings to maintain and rent the property.” The other four siblings “refused this option.” “[Quinn] was asked if she wanted to purchase the property, and she declined.” “After many months of conversations and no agreement among the siblings . . .

[respondent] decided to sell the property It was only after this decision that [Armstead] brought up Samuel's initial idea of all five siblings maintaining the property. . . . there was still no agreement among the five of us on keeping the property." All three siblings disputed appellants' assertion that an insurance policy naming Karen as beneficiary was a gift to the trust and explained that Karen used the proceeds to cover burial and funeral costs. Jean and Karen further stated that, after Karen was reimbursed from the trust for burial costs, she voluntarily gifted her siblings \$4,000 each in order to appease appellants.

The record thus establishes that, when appellants filed their petition challenging respondent's actions, the siblings already had considered the various options proposed by respondent and been unable to reach an agreement about keeping the property. Because the other options had been rejected, it was not reasonable for appellants to file a petition raising those options again and questioning the decision to sell. In addition, the declarations of Samuel, Jean, and Karen establish that all five beneficiaries were treated equally as to the trust assets and that there was no reasonable basis to challenge the decision to sell the property or to raise questions regarding Jean's accounting services to the trust and the use of insurance proceeds for funeral costs.

The award of respondent's attorney fees and costs under section 17211 is affirmed.

DISPOSITION

The order is affirmed. Respondent is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.