Filed 4/2/14 Estate of Jones CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Estate of LONZA JONES, Deceased.	B247615 (Los Angeles County Super. Ct. No. BP119394)
MATHIS JONES, Petitioner and Appellant, v. STEPHANIE BROWN, as Administrator, etc., Objector and Respondent.	

APPEAL from an order/judgment of the Superior Court of Los Angeles County. Reva G. Goetz, Judge. Affirmed.

Mathis Jones, in propria persona, for Petitioner and Appellant.

Law Offices of Andrea G. Van Leesten and Andrea G. Van Leesten for Objector and Respondent.

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In this appeal, Mathis Jones (appellant) in pro per, challenges a number of probate court orders regarding the estate of his brother, Lonza Jones, who died intestate. Appellant contends the probate court erred in determining Johnniese Peterson Exum (Exum) was the sole heir of the estate. According to appellant, the evidence was insufficient to determine Exum was the sole heir because conflicting evidence exists that she is not decedent's biological child. Appellant also asserts the probate court erred in appointing Stephanie Brown (respondent) as administrator of the estate. Appellant further claims the probate court erroneously approved the administrator's actions in marshalling approximately $60,000 in a Wells Fargo Bank account which had been held jointly in his and Lonza's names. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Decedent and appellant are brothers. The two brothers had a sister, who died in the 1960s. Decedent raised his sister's children including a niece, Elinda G. Edwards. Decedent died on September 10, 2009.

On October 9, 2009, Edwards filed a petition to be appointed administrator of the estate with full letters of administration. Edwards's October 9, 2009 petition alleged that decedent had two biological children, Wallace L. Wright and Johnniese Peterson Exum. The petition further alleged that decedent had, among other assets, a Wells Fargo Bank account in the amount of $15,000.

Respondent is Wright's daughter and she filed a competing petition for appointment as administrator of the estate on December 21, 2009. Respondent's petition also listed a $15,000 Wells Fargo Bank account as an asset of the estate.

On January 25, 2010, the probate court granted respondent's petition. The probate court issued letters of administration on July 1, 2010.

In January 2011, appellant filed a petition to be appointed as the administrator of the estate. Appellant's petition also listed as an asset of the estate a Wells Fargo Bank account but in the amount of $22,484.40.

On February 3, 2011, appellant filed a petition for removal of respondent as the administrator. The petition requested respondent's removal on the ground she petitioned

to be appointed as administrator of the estate on the erroneous theory her father, Wright, was decedent's son. The petition contained the following allegations. When Wright was born, his mother was married to another man, Walter Wright, who always acknowledged Wright as his son. Decedent never acknowledged Wright as his son. Edwards mistakenly identified Wright as decedent's son in the original petition; and, decedent's nieces erroneously identified Wright as decedent's son in the obituary.

On, January 30, 2012, respondent filed a First and Final, Fees and Distribution petition. Among the assets listed in the report was a Wells Fargo Bank account in the amount of $22,484.40. The probate court approved the final report on August 24, 2012.

On September 14, 2012, appellant filed a motion for reconsideration[1] which, among other things, challenged the evidentiary basis for concluding Exum was decedent's daughter. The motion also asserted that decedent's three nieces had a greater claim on the estate's assets than Exum because decedent became their legal guardian in 1965.

In the interim, the probate court entered an order settling the first and final account and report of the administrator on September 21, 2012. On September 27, 2012, respondent filed opposition to the motion for reconsideration. The probate court denied the motion on November 28, 2012.

Appellant filed a petition to present new evidence to support a second motion for reconsideration on November 28, 2012, which was set for hearing on March 6, 2013.

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1 On July 15, 2003, appellant filed a motion to augment the record on appeal to include a number of documents filed in the lower court. The motion to augment the record on appeal is granted. The clerk's transcript only contained a case summary and some minute orders. By letter dated January 6, 2014, we asked the parties to address the adequacy of the appellate record in light of the clerk's transcript and motion to augment both of which did not include a number of documents pertinent to the disposition of the appeal. We also noted that no reporter's transcript had been filed. On January 21, 2014, we granted appellant permission to file a number of documents which were missing from the clerk's transcript including documents contained in the motion to augment.

Also on January 21, 2014, we continued oral argument in this matter from January 31, 2014 to February 27, 2014 after appellant requested an extension of time to file a reporter's transcript. No reporter's transcript has been filed.

Appellant asserted: the administrator removed funds from a bank account which was held in his and decedent's name; respondent should not have been appointed administrator and received a fee; and as decedent's closest relative, he should have been the administrator. The probate court denied the petition to present new evidence on March 6, 2013. On March 14, 2013, appellant filed a notice of appeal in which he challenged respondent's appointment as the administrator of the estate on the ground "she had no kinship or relationship to decedent."

DISCUSSION

In the appeal, appellant claims he was the original administrator of the estate. Appellant challenges: respondent's appointment as the administrator of the estate; respondent's actions in marshalling and distributing the assets of two bank accounts held in his name and that of decedents; and the credibility and weight of evidence to support the probate court's finding Exum was decedent's daughter and sole heir.

Respondent is correct that the time to challenge her appointment as administrator has expired. California Rules of Court, rule 8.104 requires an appeal to be filed: within 60 days after service by the court clerk or a party of notice of entry of judgment or 180 days after entry of the appealable order. An order granting or denying letters to a personal representative is appealable. (Prob. Code, § 1303, subd. (a).) The probate court granted respondent's petition for appointment as administrator on January 25, 2010 and issued letters of administration on July 1, 2010. Therefore, appellant's challenges are time-barred. In any event, at the time of the appointment, respondent's request for appointment was based on a claim she was decedent's granddaughter because decedent acknowledged that Wright was his son. At the time she was appointed, respondent's claim that decedent acknowledged her father as his son gave her statutory priority over appellant, who was decedent's sibling. (Prob. Code, §§ 6452, 8461, subds. (c)(1) & (c)(f); Fam. Code, §§ 7611; see also *Estate of Griswold* (2001) 25 Cal.4th 904, 910-918.)

Appellant also claims respondent improperly marshaled assets from two bank accounts in which he and decedent were listed as owners. Respondent claims that the issue was not before the probate court. We note that references are made to a Wells

Fargo Bank account in all the probate petitions requesting appointment of an administrator including the petition filed by appellant; and, there is a reference to a Wells Fargo bank account in the amount of $22,000. However, the record on appeal is insufficient to conclude that this was a joint bank account in which appellant had an ownership interest. An appellant has an affirmative obligation to present an adequate record. "A fundamental principle of appellate law is the judgment or order of the lower court is presumed correct and the appellant must affirmatively show error by an adequate record." (*Parker v. Harbert* (2012) 212 Cal.App.4th 1172, 1178.) Moreover, an appellate court indulges all intendments and presumptions to support the lower court's order on all matters on which the record is silent. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) "It is the burden of appellant to provide an accurate record on appeal to demonstrate error. Failure to do so precludes an adequate review and results in affirmance of the [lower] court's determination" (*Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 448 ["The absence of a record concerning what actually occurred [in the lower court] precludes a determination [of error]"].) Furthermore, the same standards apply to appellant who is representing himself on appeal because pro per status is not a ground for more lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985; *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.) We simply have no basis for concluding that the probate court erroneously included assets from a joint bank account in its approval of the administrator's report.

Appellant also claims there was insufficient evidence that Exum was decedent's daughter. However, the record on appeal is inadequate to determine any error. We note only that snippets of the record show the probate court had evidence that, during his lifetime, decedent acknowledged Exum as his daughter, including taking her into his home and claiming to be her father in school records. (Prob. Code, §§ 6450; Fam. Code § 7611, subd. (d); *In re Richard M.* (1975) 14 Cal.3d 783, 790-796; *Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36, 45-46; see also *E.C. v. J.V.* (2012) 202 Cal.App.4th 1076,

1086-1088.) Accordingly, we have no basis for setting aside the order providing that she was decedent's sole heir.

DISPOSITION

The orders are affirmed. Respondent , as administrator of the Estate of Lonza Jones, is awarded her costs on appeal.

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_____, J. *

FERNS

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.