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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

YOU WEI DONG, as represented,  
etc.,

Plaintiff;

v.

ALICIA CHANG,

Defendant,

ZEHUI LI YEN,

Appellant;

CSC FIDUCIARIES, INC., as  
Conservator, etc.,

Respondent.

A169579

(San Francisco City & County  
Super. Ct. No. CGC20584746)

Appellant Zehui Li Yen, the former conservator for the estate of You Wei Dong and former guardian ad litem (GAL) in the underlying personal injury lawsuit, appeals from the trial court's order granting the current conservator's, CSC Fiduciaries, Inc. (CSC), petition for approval of compromise. Yen contends the trial court erred in declining to require that the settlement funds be used to purchase two annuities for the benefit of Dong, with the remaining funds placed into a blocked account. Yen also asserts she was wrongfully removed as GAL, and the trial court erred in declining to reimburse her for fees and expenses incurred while serving as

GAL. We agree Yen was entitled to have the trial court consider her request for reimbursement of reasonable expenses and remand on that issue. We otherwise affirm the order.

### **BACKGROUND**

In 2019, Dong was involved in a workplace accident that resulted in a severe brain injury. Yen, a friend of Dong's, was appointed as Dong's GAL for the purpose of pursuing his workers' compensation claim. Approximately a year later, Yen also was appointed as Dong's GAL for his personal injury claim.

In March 2021, Yen filed a petition for conservatorship of the person and estate of Dong. The court appointed Yen as conservator of Dong's person and estate and appointed counsel for Dong.

In mid-2022, Yen filed her first account and report as conservator, which sought in part \$26,091.37 for amounts advanced to the conservatee's estate, \$160,542.40 for her services as conservator during the accounting period, \$298,285.60 for services she rendered as GAL from August 28, 2019, to June 30, 2021, and \$38,122.00 for the time spent filing the conservatorship and providing caregiver services from November 20, 2019, to September 16, 2021.

Shortly after filing the first accounting, the workers' compensation case settled. That settlement provided in part, "In addition to the settlement sums set forth in Paragraph 7 of this agreement Defendant . . . agrees to pay to GAL Zehui Li Yen the sum of \$80,000.00 in full." The remainder of that sentence, which was crossed out and initialed by Yen only, states "and final satisfaction of any and all claims for services rendered as GAL and reimbursement for any out of pocket fees or expenses including those currently under litigation at the WCAB."

Yen subsequently filed an amended first account and report, which sought \$26,091.37 as reimbursement to Yen as conservator “for this account period” and a conservator fee of \$458,828 for her “three years of service.” That first amended accounting asserted the \$80,000 payment from the workers’ compensation settlement was “reimbursement of [Yen’s] mileage and travel expenses for the conservatee’s trips and medical treatments and the penalty for not paying the conservator for her service as a [GAL] . . . .”

Court-appointed counsel expressed concerns regarding certain expenditures listed in the accounting and requested Yen be removed as conservator. He noted the court investigator had similar concerns and had recommended the court not approve the accounting. Counsel noted Yen (1) could not serve as conservator if she were also a creditor of the conservatee under Probate Code section 1820, subdivision (c), (2) was financially conflicted from serving as conservator, and (3) interfered with counsel’s attempt to meet with Dong and “pursue a substituted judgment petition.” Counsel thus asked the court to appoint CSC as successor conservator, evaluate Yen’s claims, investigate Yen’s acts, and evaluate the validity of the settlement agreements.

In early December 2022, the court ordered Yen suspended as conservator and named CSC as the successor temporary conservator. Two days later, Yen filed a “Pre-Move Notice of Proposed Change of Personal Residence” for Dong, identifying a new address for him in China. She also withdrew approximately \$68,000 from the conservatorship account.

Because of this withdrawal, CSC moved to freeze certain bank accounts holding Dong’s workers’ compensation settlement payments. CSC also requested the court grant it authorization to sign the petition for approval of compromise of the personal injury claims. The court granted both requests.

CSC filed its petition for approval of compromise of claim for the personal injury lawsuit. Thereafter, in February 2023, Yen filed an objection to the petition for approval. She stated she did not object to the amount of the settlement, but asserted the petition failed to include the purchase of annuities, the requested attorney fees were excessive, and the petition failed to request GAL reimbursement.

Yen also filed a motion to approve her GAL fees and other reimbursements. Yen requested the following amounts: \$315,526.85 for GAL services, \$57,600 for room and board, \$1,683 for medical bills, \$31,025.67 for mileage reimbursement, and \$1,683 for travel.

Yen subsequently filed supplements to both her petition for approval of fees and costs and her objection to the petition for compromise of claim. In connection with her petition for fees and costs, Yen requested an additional \$33,990.92 in GAL fees, which included in part (1) additional time spent on the personal injury lawsuit, (2) time spent “providing medical treatment” that was not covered by workers’ compensation, and (3) other time spent communicating with attorneys and preparing her petition for reimbursement of costs and fees. Yen’s supplement to her objection to the petition for compromise restated her prior objections and specifically requested the fees sought in her petition for fees and costs.

In advance of the August 2023 hearing on CSC’s petition for compromise of claim, Yen sought to continue the hearing. In response, CSC filed an ex parte application to remove Yen as GAL. CSC argued Yen was attempting to delay its petition for compromise and the corresponding settlement in order to obtain GAL fees, Yen’s actions were not in Dong’s best interest, and a GAL was no longer needed because of CSC’s appointment as conservator.

Following a hearing on the petition, the court approved the settlement and ordered the settlement funds deposited in an interest-bearing account held by CSC on behalf of Dong; it did not order that any funds be used to purchase an annuity or placed into a blocked account. The court also removed Yen as GAL and concluded it lacked authority to award her reimbursement under the Probate Code. The court subsequently dismissed the entire action with prejudice, and Yen appealed.<sup>1</sup>

### DISCUSSION

On appeal, Yen asserts the trial court abused its discretion in declining to order the settlement funds placed into an annuity and blocked account. She further argues the trial court erred in removing her as GAL and declining to consider her request for payment of her GAL fees and expenses. We address each argument in turn.<sup>2</sup>

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<sup>1</sup> The record contains a motion for reconsideration filed by Yen, which was opposed by CSC. However, the record does not indicate how that motion was resolved.

<sup>2</sup> On December 13, 2024, CSC moved to dismiss this appeal under the disentitlement doctrine, claiming Yen (1) violated state law by moving Dong from California to China without probate court authorization, (2) violated a court order requiring her to relinquish control over funds she holds for Dong's benefit, and (3) was subject to a pending order to show cause for contempt in the probate matter. On July 17, 2025, CSC filed a request for judicial notice of various trial court materials related to the ongoing conservatorship proceedings. Yen opposed both the motion and the request for judicial notice. This court deferred ruling on the motion until resolution of the appeal. While we grant the request for judicial notice (Evid. Code, §§ 452, subd. (d), 459), we deny CSC's motion to dismiss. The supporting materials do not clearly indicate Yen violated court orders or demonstrate whether such conduct was the result of "willful disobedience or obstructive tactics." (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 244.)

## **I. Apportionment of Settlement Proceeds**

Yen raises various arguments for why the trial court erred in declining to order the net settlement funds be used to purchase an annuity, with the remainder placed into a blocked account. Yen first asserts the trial court was required to defer to Yen, as GAL, in allocating the settlement proceeds but failed to do so. Yen next argues the court abused its discretion by refusing to place the majority of the funds into an annuity, with the remainder placed into a blocked account, because such an allocation is in Dong's best interest. None of her arguments have merit.

### **A. The Trial Court Was Not Required To Adopt Yen's Position**

Yen argues she had sole authority to direct how the settlement funds were utilized because of her appointment as GAL in the matter. She claims the court's failure to give her request " 'some deference' " was an abuse of discretion. We disagree.

Under California law, the authority of a GAL to manage the allocation of settlement funds on behalf of an incapacitated person is limited when a separate conservator of the estate has been appointed. (See 4 Witkin, Cal. Proc. (6th ed. 2025), Pleading, § 76 ["Because the function of the guardian ad litem is merely to prosecute or defend an action, and one may be appointed even though there is a general guardian or conservator [citation], the guardian ad litem does not have the powers of a general guardian or conservator with respect to the estate."].) The GAL's primary role is to represent the best interests of the incapacitated person in litigation, not to assume the powers granted to a conservator under the Probate Code. (*In re Marriage of Caballero* (1994) 27 Cal.App.4th 1139, 1149 [" 'A guardian ad litem is not a party to the action, but merely a party's representative [citation], an officer of the court [citation]. . . . 'The duties of a guardian ad

item are essentially ministerial.”’”].) This distinction is set forth in Code of Civil Procedure section 372, which allows a GAL to compromise or settle claims with court approval but does not confer authority over postsettlement fund management. (Code Civ. Proc., § 372, subd. (a)(3).) Rather, section 372, subdivision (a)(3) provides: “Money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a . . . person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.” (Code Civ. Proc., § 372, subd. (a)(3).) Section 3602 of the Probate Code then states that “if there is a . . . conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court . . . , *shall* be paid or delivered to the guardian or conservator of the estate.” (Prob. Code, § 3602, subd. (b), italics added.)

Accordingly, while a GAL may negotiate and seek approval for a settlement, the conservator retains exclusive authority over how the proceeds are allocated and managed, underscoring the statutory separation of litigation representation and fiduciary financial control. Here, once settlement was reached, Yen’s role as GAL was substantively complete regardless of her removal as GAL. The court thus did not err simply by declining to defer to Yen’s preference for the ongoing management of the settlement funds. To the contrary, it was appropriate for the court to defer to the request of the conservator—CSC—who would be responsible for the future management and use of such funds for Dong’s care.

#### **B. The Ordered Disposition Was Not an Abuse of Discretion**

Next, Yen asserts an annuity and blocked account would be in Dong’s best interest, and the failure to order such an allocation constituted an abuse

of discretion. In support of her position, Yen relies on various Probate Code provisions which provide trial courts with the *option* to allocate funds to an annuity or blocked account. (See Prob. Code, § 3602, subds. (c)(1) [“the court making the order . . . may for good cause shown order . . . [t]hat all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account . . . or in a single-premium deferred annuity.”], (b) [“the court making the order . . . may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in [Probate Code] Section 2456.”].)

### **1. The Requested Annuities**

In support of her argument that the trial court erred in declining to order the purchase of two annuities, Yen contends she demonstrated good cause for such an order as required by Probate Code section 3602. Specifically, Yen asserts her calculations regarding the income Dong would receive from an annuity constituted the required “good cause,” Dong “had gone back to China,” and CSC was not acting in Dong’s best interest. These arguments fail to demonstrate the trial court abused its discretion.

Undoubtedly, an annuity is a potential option when courts assess how to distribute funds payable to an incapacitated person. Probate Code section 3602 provides: “Upon ex parte petition of the guardian [of the estate] or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court . . . may for good cause shown order one or more of the following: [¶] (1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited . . . in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.” (Prob. Code, § 3602,



subd. (c)(1).) But nothing in the Probate Code favors the purchase of an annuity over depositing the funds with the conservator of the estate.

This statutory language grants the trial court with discretion to consider the appropriate disposition of funds; in such an instance, we apply an abuse of discretion standard of review. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.) “Under that standard, there is no abuse of discretion requiring reversal if there exists a reasonable or fairly debatable justification under the law for the trial court’s decision or, alternatively stated, if that decision falls within the permissible range of options set by the applicable legal criteria.” (*Ibid.*)

Here, Yen requested the purchase of two annuities, one of which would provide benefits for ten years and the other would provide benefits for Dong’s lifetime. Yen noted these proposed annuities, combined with his prior workers’ compensation annuity, would provide monthly benefits of \$34,123.45 per month for nine years, and then \$17,381.22 per month for the remainder of Dong’s life. However, Yen acknowledged these amounts are “far less than [Dong] needs, should he come back to the United States”; those needs were roughly estimated at \$37,518 per month after ten years, “and rising additionally after that.”

In opposition, CSC explained Dong was already receiving substantial annuity payments from Dong’s workers’ compensation claim, “having a separate, large fund to both invest and disperse as needed for [Dong’s] benefit made good sense,” “[t]ransferring regular annuity payments to China could prove problematic and expensive,” and requiring an application to the court

for approval for each and every withdrawal would incur unnecessary fees (i.e., a court appearance for a CSC representative and its attorney).<sup>3</sup>

In considering the parties' positions, the record contains sufficient justification for the trial court's decision to direct the funds deposited with CSC. CSC raised reasonable concerns regarding an annuity, such as increased management costs. Moreover, the direction of funds to CSC—as Dong's conservator—is the default allocation under Probate Code section 3602, subdivision (b). Apart from claiming without any evidentiary support that CSC was not acting in Dong's best interests, Yen does not identify any concerns regarding CSC's management of Dong's estate, such as mismanagement of funds or other malfeasance. Accordingly, the trial court did not abuse its discretion in declining to order the purchase of an annuity and instead directing the funds to an interest-bearing account under CSC's control for the benefit of Dong.<sup>4</sup>

## **2. The Requested Blocked Account**

Yen also asserts the remaining funds—after the payment of expenses and the purchase of the requested annuities—should have been placed into a blocked account. However, Yen lacks authority to make such a request.

Probate Code section 3602, subdivision (b) states in relevant part: “Upon application of the guardian or conservator, the court making the order

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<sup>3</sup> Yen asserts CSC only objected to an annuity after the trial court's tentative ruling. But she does not explain how this is relevant to the question of whether the trial court abused its discretion in declining to order an annuity.

<sup>4</sup> While not raised by CSC, we note Yen—as neither a guardian of the estate or a conservator of the estate—was required to file a petition under Probate Code section 3602, subdivision (c) requesting the purchase of an annuity. (Prob. Code, § 3602, subd. (e).) Nothing in the record indicates she followed these procedures.

. . . may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in [Probate Code] Section 2456.” Probate Code section 2456 then provides, “Upon application of the guardian or conservator, the court may, with or without notice, order that money or other personal property be deposited pursuant to Section 2453 or 2454, and be subject to withdrawal only upon authorization of the court.” (Prob. Code, § 2456, subd. (a).)

In both section 3602 and section 2456 of the Probate Code, only the guardian or conservator may file an application for funds to be placed into a blocked account. And the term “guardian” does not encompass a GAL. Rather, “guardian” is defined as “guardian of the estate.” (Prob. Code, § 2400, subd. (c).) Because Yen has never been a guardian of Dong’s estate and was removed as conservator of his estate in December 2022, she lacked authority to request that the funds be deposited into a blocked account. As such, the trial court did not abuse its discretion in deferring to CSC’s request to directly manage the funds.

## **II. Removal of Yen as GAL**

Yen asserts she was improperly removed as GAL on an ex parte basis because CSC failed to show any irreparable harm to Dong. She further contends the ex parte application did not provide Yen “the due process rights” to oppose the application and respond to the “speculation” and “outright falsehoods” contained in the application.

As an initial matter, CSC argues Yen waived this argument by failing to explain why removing a GAL via an ex parte application is improper. We agree. While Yen asserts the ex parte application did not comply with procedural rules, she fails to cite which procedural rules she is referencing.

(See, e.g., *Chui v. Chui* (2022) 86 Cal.App.5th 929, 936 [“The Probate Code provides for the appointment of guardians ad litem (Prob. Code, § 1003), but includes no substantive or procedural provisions governing their removal.”].) Nor does she cite any authority in support of her argument. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.”].)

At most, Yen appears to contest CSC’s compliance with the general rules governing ex parte application. Specifically, Yen alleges the application failed to contain a declaration showing irreparable harm, a memorandum, or a proposed order. However, CSC substantively satisfied these requirements; it submitted a 16-page ex parte application, setting forth a detailed factual background, legal argument supporting Yen’s removal, and the requisite notice provisions. The ex parte application was supported by a verification, in which Diana Lowe of CSC declared under penalty of perjury that the ex parte application “is true of my own knowledge except for the matters that are stated in it on information and belief, and regarding those matters I believe it to be true.” As part of its application, CSC explained Yen moved Dong from California to China without authorization; prioritized collecting her GAL fees over Dong’s interests, resulting in an ongoing almost one-year delay in the current personal injury settlement; and withdrew the majority of Dong’s workers’ compensation settlement funds, which could jeopardize Dong’s future entitlement to Medicare. (*Newsom v. Superior Court* (2020) 51 Cal.App.5th 1093, 1097 [applicant must make affirmative factual showing based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for ex parte relief].) Based on the foregoing, the court

could have concluded CSC demonstrated an adequate basis to remove Yen as GAL.

Even assuming error, a violation of due process requires reversal only if we cannot say that the error was harmless beyond a reasonable doubt. (*In re Jessica G.* (2001) 93 Cal.App.4th 1180, 1189.) Here, the court approved the personal injury settlement, which would have ended Yen's role as GAL in the litigation. (*Safai v. Safai* (2008) 164 Cal.App.4th 233, 245 [guardian ad litem "is a representative of record of a party" to the action].) As explained, *ante*, in part I.A., any subsequent management of the settlement funds falls under the duties of the conservator. (Prob. Code, §2401, subd. (a) [conservator "has the management and control of the estate"]; see Code Civ. Proc., § 372, subd. (a)(3); Prob. Code, § 3602, subd. (b).) Accordingly, Yen would not have had any ongoing role in managing the settlement funds, establishing bank accounts on behalf of Dong, or any other general management of Dong's estate. As such, she has failed to demonstrate any harm resulting from her removal as GAL in connection with the court's approval of the personal injury settlement.

### **III. Recovery for GAL Expenses**

In connection with Yen's request for expense reimbursement, she primarily relied on Probate Code sections 3600 and 3601. The court concluded she was not entitled to expenses because "Yen was appointed as GAL pursuant to [Code of Civil Procedure section] 372," and "the Probate Code does not apply" because the matter was a personal injury case. Yen contends the trial court erred in reaching this holding. CSC concedes the court misinterpreted Probate Code section 3600 and should have considered Yen's "reasonable" expenses "strictly limited" to her services as GAL.

While the trial court correctly noted Yen was appointed under Code of Civil Procedure section 372, the court failed to recognize that Code of Civil Procedure section 372 incorporates Chapter 4 of the Probate Code, commencing with Probate Code section 3600. Specifically, Code of Civil Procedure section 372 provides: “Money . . . to be paid or delivered pursuant to the order or judgment for the benefit of a . . . person lacking legal capacity to make decisions . . . shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.” (Code Civ. Proc., § 372, subd. (a)(3).) Probate Code section 3600 then contains broad language, stating it applies “whenever” a court approves a compromise of a pending action involving the payment of money for the benefit of the person with a disability. (Prob. Code, § 3600, subds. (a), (b).) And Probate Code section 3601 authorizes reimbursements from such payments, providing: “The court making the order or giving the judgment referred to in [Probate Code] Section 3600” shall authorize reimbursement of “reasonable expenses, medical or otherwise” to a “parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate,” including “costs[ ] and attorney’s fees.” (Prob. Code, § 3601, subds. (a), (b)(1).)

The express language of Probate Code sections 3600 and 3601, coupled with Code of Civil Procedure section 372, thus indicates GALs are entitled to seek reimbursement for reasonable expenses arising from their services, regardless of whether they are appointed under the Probate Code or Code of Civil Procedure section 372.

In *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378, 1382, the Fourth District Court of Appeal explained Probate Code section 3601 “bestows broad power on the court to authorize payment from the

settlement—to say who and what will be paid . . . .” The *Goldberg* court further explained a court need not simply accept or reject requests for reimbursement; rather, “the court is obliged to decide both what is reasonable *and* how much it will allow. The breadth of the language and absence of any restrictions on the approval process suggest the court can make the determination any number of ways. Among other things, it may determine ‘reasonable’ from the perspective of the total settlement and ‘allow’ expenses by a reduction of all charges on a pro rata basis, by picking and choosing between expenses, or by some other variation.” (*Ibid.*) Based on the record, it appears Yen may have received compensation for certain GAL services, while others may have remained uncompensated. Accordingly, we remand for the court to consider Yen’s reasonable expenses—apart from attorney fees or other expenses that have already been reimbursed—and determine what expenses are reimbursable in the first instance.

#### **DISPOSITION**

The trial court’s November 9, 2023 dismissal with prejudice is reversed. The matter is remanded to the trial court with directions to (1) vacate the order granting CSC’s petition as to its denial of Yen’s request for fees and expenses incurred as guardian ad litem, and (2) reconsider Yen’s request for fees and expenses in accordance with this opinion. In all other respects, the order is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

PETROU, J.

WE CONCUR:

TUCHER, P. J.

RODRÍGUEZ, J.

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