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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

ALBERTO T. GARCIA, as Successor Trustee, etc., Plaintiff and Respondent, v. BENJAMIN GARCIA, JR., Defendant and Appellant.	C098735 (Super. Ct. No. 34202100301971)

This case involves a dispute between two siblings, Alberto T. Garcia (Albert) and Benjamin Garcia, Jr. (Benjamin), over a family home held in a trust created by their parents, Benjamin Garcia, Sr. (father) and Gloria Garcia (mother). After a bench trial, the trial court concluded that the trust be divided into two shares upon father's death with each part holding a 50 percent interest in the family home. The court found that Benjamin used undue influence to get mother to amend the trust and deed the family home to him and that mother lacked the requisite capacity to execute those documents.

The court deemed Benjamin to have predeceased mother under Probate Code section 259 and found him liable for double damages under Probate Code section 859.

Benjamin appeals. Without a reporter's transcript of the trial, he contends the court: (1) incorrectly interpreted the trust; (2) applied the wrong standard to determine capacity; (3) lacked substantial evidence for several findings; and (4) ignored evidence of Albert's unclean hands. We disagree and affirm. Statutory references are to the Probate Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Due to the lack of a reporter's transcript, we draw the factual background from the trial court's statement of decision and other portions of the clerk's transcript.

I

The Trust

Mother and father created the trust in 2004. According to its terms, the trust estate would be divided into two trusts when the first spouse died: trust A and trust B. Trust A would consist of the surviving spouse's interest in the trust estate, whether community or separate property. And trust B would consist of the "portion of the Predeceased Spouse's taxable estate up to the whole thereof, but not to exceed the maximum exemption equivalent allowable for federal estate tax purposes . . . ." Trust B could not be revoked or amended. Father left his portion of the trust estate to Albert, while mother left her portion equally to their other twelve children, including Benjamin and sisters Alicia, Dolores, Elva, Belinda, Elizabeth, and Imelda. The primary asset of the trust is the family home (the property).

At some point, Benjamin took the trust to an attorney to review and learned that the trust favored Albert. According to Belinda, Benjamin refused to make repairs to the property because he thought Albert, the person inheriting the property, should be the one to pay for any repairs. In 2015, father signed a document stating he wanted the property to be left to Benjamin "to live there for the rest of his days" (2015 document). The 2015

document was also signed by Elva and Imelda, but Elva did not read it thoroughly and did not see father sign it. Also, father did not read English and could not have drafted the 2015 document. Benjamin previously presented a similar document to Elizabeth, but she refused to sign it.

II

Father's and Mother's Deaths

Father died in November 2016. In mid-March 2021, mother started exhibiting symptoms of weakness, fatigue, confusion, and poor mobility. One morning, mother informed Benjamin that she was not feeling well. Benjamin called Dolores and told her he would receive nothing if mother died. He then summoned Alicia to help care for mother. Alicia immediately instigated a fight with Belinda, who had been living at the property on weekends, causing Belinda to move out and stop visiting.

At a family gathering on March 28, 2021, mother appeared weak, one side of her face was drooping, and one foot was dragging. Dr. Donald Hilty, Alicia's son-in-law, examined mother and believed she may have had a stroke. Mother was admitted to the hospital where it was discovered she had two inoperable brain tumors. A neurologist informed Dolores, Benjamin, and mother that she had about six months to live.

Mother returned home on April 1, 2021, where Alicia and Imelda assumed her care. Between then and April 16, 2021, mother was isolated from Albert and other family members. The front door was no longer left unlocked, a doorbell camera and driveway alarm were installed, multiple baby monitors were deployed around the house, and Alicia and Imelda closely monitored all conversations and interactions with mother. Mother was also administered "inappropriate doses of Ambien, melatonin, and/or CBD oil." Mother was groggy, confused, disoriented, tired, and unable to engage in conversation.

According to a speech therapist, on April 9, 2021, mother was administered a mental status exam to assess her cognition. She "was found to suffer from multiple,

severe, mental deficits." Examinations on April 13 and April 16 also indicated mental deficits.

On April 13, 2021, mother informed Dolores and Elizabeth that Benjamin was sending a man to meet with her so she could sign documents regarding the property. Mother was unable to tell them who the man was, what the documents were, or why they were needed. Alicia interrupted the conversation to say that mother was confused and Benjamin was obtaining a loan to make repairs to the property. But mother and Alicia could not identify what repairs were needed. Dolores and Elizabeth advised mother not to sign any documents until mother spoke to Albert.

Also on April 13, 2021, Benjamin contacted an attorney and stated he wanted mother's trust amended to obtain a loan secured by the property to make repairs. The next day, the attorney called mother to discuss the proposed amendment. According to the attorney, the conversation was "somewhat labored," but mother stated she wanted Benjamin to take over the trust to make repairs to the property. The attorney was still not comfortable drafting the amendment after the conversation.

On April 15, 2021, the attorney met mother in person at the property. When he asked her whether she wanted Benjamin to take over the trust to make property repairs, her answer was "not as straightforward" as he preferred. But mother stated that repairs needed to be made, and Benjamin would make them. The attorney told Benjamin he needed a letter from a physician regarding mother's capacity before he would draft the proposed amendment. Benjamin told the attorney he could obtain a letter, so they scheduled a signing appointment for the next day.

On April 16, 2021, Alicia and Imelda took mother to the attorney's office, where they met Benjamin. Alicia's daughter delivered a letter signed by Dr. Hilty dated April 11, 2021. In the letter, Dr. Hilty stated he had examined mother on March 28, 2021, and April 4, 2021, performed a mental status evaluation with a score of 29 out of 29, and assessed her ability to make independent decisions on healthcare, finances, and legal

matters as intact. After the letter was delivered, mother was made to execute three documents: (1) a trust amendment naming Benjamin as the trustee, revoking the trust's distribution provisions, and naming Benjamin as the sole beneficiary (trust amendment); (2) a limited power of attorney naming Benjamin as mother's attorney-in-fact with the power to obtain a loan on the property; and (3) a grant deed transferring title to the property to Benjamin (April 16 grant deed). Benjamin, Alicia, and Imelda never discussed the execution of these documents with Albert, Dolores, Belinda, or Elizabeth. And Imelda lied to Belinda about mother's whereabouts on April 16.

Immediately after the signing, Alicia returned to southern California, and mother's care fell to Dolores, Belinda, and Elizabeth who noticed an immediate improvement in mother's mental state, level of arousal, energy, and general health following the transition of care. Benjamin took no action to obtain a loan or make repairs to the property. In his deposition, he testified that making repairs was a concern, but not the main concern.

Dolores and Albert asked mother to execute estate planning documents after April 16, 2021. Albert and other family members were not able to find the original 2004 trust, so Albert asked an estate planning document preparer to draft a new trust with the same terms as the original 2004 trust with the intent of replacing the missing trust.

In early May 2021, Dolores found the April 16 grant deed in mother's mail. Mother had no memory of signing it, talking to the attorney, or going to the attorney's office. On numerous occasions, mother stated she never intended to give the property to Benjamin. One of those conversations was recorded and admitted into evidence.

Mother died on June 5, 2021.

III

The Lawsuit, Trial, and Order

On June 8, 2021, Albert filed the original petition in this case. In his amended petition filed a few months later, he alleged Benjamin had wrongfully obtained title to the property using undue influence and mother lacked the intent and capacity to transfer the

property to Benjamin. Benjamin filed an objection to the petition, denying the allegations and requesting an evidentiary hearing.

Following a three-day bench trial, the court ruled in Albert's favor: (1) finding undue influence, lack of capacity, and elder financial abuse; (2) setting aside the 2015 document, the trust amendment, and the April 16 grant deed; (3) requiring Benjamin to convey the property back to the trust; (4) deeming Benjamin as having predeceased mother under section 259; and (5) awarding double damages under section 859 in the amount of $1,350,000. The bench trial was not transcribed by a court reporter.

Benjamin requested a statement of decision on the factual basis for the capacity, undue influence, elder abuse, and section 259 findings. Albert prepared a proposed statement of decision per the trial court's request. (California Rules of Court, rule 3.1590.) Benjamin objected to the proposal, insisting mother had capacity, there was no evidence she was drugged or intended to sell the property, and the evidence did not establish financial abuse. The court adopted the proposed statement of decision.

The statement described the trust as an A/B trust that became trust A and trust B upon father's death. Trust B was irrevocable and held a 50 percent interest in the trust assets.

As to capacity, the statement began by citing section 811 and then described the evidence offered by Dr. Hilty, the speech therapist, and three of mother's daughters. According to the statement, Dr. Hilty's testimony, capacity letter, and findings lacked credibility. By contrast, the speech therapist's testimony and related tests were persuasive. Those tests showed deficits in several cognitive functions, including the ability to concentrate, understand and communicate with others, and reason logically. Belinda, Elizabeth, and Dolores corroborated mother's impairments, testifying that mother was lethargic, catatonic, and unable to engage in conversation between April 1 and 16, 2021. Mother's inability to tell them on April 13, 2021, who was coming to have her sign documents, what the documents were, or the purpose of signing them indicated

mother lacked the capacity to execute the documents. Also, the evidence that mother could not remember going to an attorney or signing any documents supported the conclusion that she did not have a sufficient understanding of what she signed. The statement then asserted a direct correlation between mother's mental deficits and the execution of the trust amendment and April 16 grant deed.

The statement also addressed the estate planning documents that Albert and other family members had mother execute after April 16, 2021. Albert did not allege those documents were valid. After finding Albert's actions lacking in wrongful intent and reasonable given the situation, the statement concluded that these documents had no bearing on the proceeding or on mother's capacity to execute the trust amendment and April 16 grant deed.

As to undue influence, the statement of decision concluded that Benjamin bore the burden of showing the absence of undue influence because Albert had proven that Benjamin had a confidential relationship with mother, actively participated in procuring the trust amendment and April 16 grant deed and would unduly benefit from those documents. Notwithstanding that shift in burden, Albert proved that the trust amendment and April 16 grant deed were procured by undue influence based on various factors including Benjamin's long-term plan to gain ownership of the property, mother's extreme vulnerability, evidence that mother was drugged, and Benjamin's secret actions at an inappropriate time.

Turning to section 859, the statement of decision concluded that Benjamin took the property in bad faith and through the commission of elder financial abuse as defined in Welfare and Institutions Code section 15610.30. As a result, the statement found award of the following appropriate under section 859: double damages in the amount of twice the value of the property, attorney fees, and costs. The statement deemed Benjamin to have predeceased mother under section 259.

On March 21, 2023, the court issued an order declaring the trust amendment void and requiring Benjamin to convey the property to Albert as trustee of the trust, pay $1,350,000 to the trustee of the trust under section 859, and pay attorney fees and costs (the March 2023 order).

Benjamin moved to set aside the statement of decision and March 2023 order and grant a new trial. In support, he filed a request for judicial notice of a recorded grant deed dated April 23, 2021, and signed by mother deeding the property to herself as trustee of the trust. He asked the court to take notice of that document as showing the property was in a new trust that Albert had mother create. The court denied both motions and the request for judicial notice.

Benjamin timely appeals the March 2023 order, the order denying the motion for new trial, and the award of attorney's fees and costs. Because his briefs do not challenge the order denying the motion for new trial or the order awarding fees and costs, we dismiss those appeals as abandoned and confine our review to his appeal of the March 2023 order. (See *Tanner v. Tanner* (1997) 57 Cal.App.4th 419, 422, fn. 2.)

DISCUSSION

I

Standard of Review

"In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings." (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) We do not reweigh the evidence or assess witness credibility. (*Ibid*.)

The appellant bears the burden of providing an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) In the absence of a reporter's transcript, we must presume substantial evidence supported the trial court's findings. (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 434, fn. 9.) The appellant also bears the burden of affirmatively demonstrating prejudicial error. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.) Reversal is not required where there is an independent basis to support a judgment. (*Widson v. International Harvester Co.* (1984) 153 Cal.App.3d 45, 54.)

II

Trust Division after Father's Death

Benjamin contends there was no basis for the trial court to conclude that trust B held fifty percent of the trust's assets. In his view, because the value of the trust estate was below the amount of the applicable federal tax exemption, none of the trust estate went to trust B. We disagree.

In construing the terms of a trust, we exercise our independent judgment. (*Estate of Guidotti* (2001) 90 Cal.App.4th 1403, 1406.) We look at the language used in the trust instrument, and if that language clearly sets forth the intent, we do not consider extrinsic evidence. (*Wells Fargo Bank v. Huse* (1976) 57 Cal.App.3d 927, 932; *Trolan v. Trolan* (2019) 31 Cal.App.5th 939, 949.)

Here, the language of the trust is clear. Upon the death of a spouse, trust B consists of that spouse's "taxable estate *up to* . . . the maximum exemption equivalent allowable for federal estate tax purposes . . . ." Contrary to Benjamin's view, this language does not provide that trust B consists of the taxable estate that *exceeds* the maximum federal estate tax exemption. Also, Benjamin's view that the "taxable estate" consists only of the estate's value in excess of the federal tax exemption has no support in the text of the trust or other authority. Under federal estate tax law, the taxable estate is the gross estate less various deductions, and the gross estate consists of all interests in

property owned by the decedent at the time of his death. (26 U.S.C. §§ 2051, 2031, 2033.) As he admits, Benjamin never argued that mother and father had a different understanding of "taxable estate" that prevailed over the technical meaning of that term. (Prob. Code, § 21122 [technical terms used in a testamentary instrument will ordinarily be given their technical meaning].) We reject his effort to make that fact-based argument for the first time on appeal. (*Estate of Cooper* (1970) 11 Cal.App.3d 1114, 1123.)

Benjamin mistakenly relies on an estate planning information sheet that mother and father completed at the time they created the trust. Because the information sheet was never formally moved into evidence, we cannot consider it on appeal. (*USLIFE Savings & Loan Assn. v. National Surety Corp.* (1981) 115 Cal.App.3d 336, 343.) Benjamin's assertion that we can consider this document because the trust's language is ambiguous lacks merit. The language regarding the property held in trust B is clear and not susceptible to Benjamin's interpretation. (*Trolan v. Trolan, supra*, 31 Cal.App.5th at p. 949 [court cannot consider extrinsic evidence of trust to give it a meaning to which it is not reasonably susceptible].) The fact that Albert attached the information sheet to his original petition does not change our conclusion. Such attachment did not equate to a judicial admission that the information sheet overrode the plain language of the trust. (See *Faigin v. Signature Group Holdings, Inc.* (2012) 211 Cal.App.4th 726, 737-738.)

III

Capacity to Execute the Trust Amendment

Benjamin contends the trial court applied the wrong standard to determine whether mother had the capacity to execute the trust amendment. We need not address the merits of this contention. Even if the court did apply the wrong standard to determine mother's capacity to execute the trust amendment, the court also determined that the trust amendment was procured by undue influence. That undue influence determination is significant because *either* a finding of lack of capacity *or* a finding of undue influence is sufficient to invalidate the trust amendment. (*Estate of Baker* (1982) 131 Cal.App.3d

471, 485-486; *Estate of Olson* (1912) 19 Cal.App. 379, 386 [“ ‘Undue influence is quite distinct from testamentary capacity’ ”].) Because we conclude that Benjamin’s challenges to the undue influence findings are unpersuasive, as we discuss *post*, this independent basis for finding the trust amendment invalid renders any error in the capacity standard harmless. (See *Estate of Lauth* (1960) 180 Cal.App.2d 313, 319.)

IV

Substantial Evidence Claims

Benjamin contends there was insufficient evidence to support the following findings: (1) mother lacked the capacity to execute the trust amendment and grant deed; (2) Benjamin had a confidential relationship with mother; (3) Benjamin actively participated in procuring the trust amendment and grant deed; (4) the trust amendment and grant deed were procured by undue influence; (5) mother was drugged; (6) Benjamin committed financial elder abuse; (7) the property was worth $675,000; and (8) section 259 applied to disinherit Benjamin. His contentions fall into three categories discussed below. As we explain, none of these contentions have merit.

First, Benjamin contends certain findings in the statement of decision were deficient as a matter of law. For instance, he contends the court could not rely on the tests the speech therapist performed to conclude mother lacked capacity because those tests did not specifically address the elements listed in section 6100.5. We disagree. Benjamin provides no authority suggesting such specificity is required. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [points are waived when not supported with citations to authority].) Also, legal findings on capacity can be inferred from witness observations of the testator’s cognitive abilities. (See, e.g., *Estate of Lockwood* (1967) 254 Cal.App.2d 309, 315.)

Similarly, Benjamin contends the court could not have relied on the speech therapist’s testimony because she was “not a medical provider” and only an expert could testify as to whether mother was drugged. These contentions also lack citation to

authority and are ultimately unpersuasive. Lay witnesses can generally testify to the mental condition or competency of a testator. (*People v. Webb* (1956) 143 Cal.App.2d 402, 412; see also *Jordan v. Great Western Motorways* (1931) 213 Cal. 606, 612 ["Lay witnesses having the requisite opportunity for observation may testify as to the health of another"]; *People v. Rodriguez* (2014) 58 Cal.4th 587, 631 [lay witness can testify to facts personally observed].) Benjamin's concerns go to the weight of the evidence, and that is not part of our review.

Second, Benjamin contends there was either a lack of evidence to support certain findings or the trial court failed to identify the supporting evidence or facts. He contends the absence of a reporter's transcript is not a problem because he requested a statement of decision, objected to the proposed statement, and raised the same concerns in his motion for new trial. We are not persuaded.

In the absence of a reporter's transcript or settled statement, we must presume that the necessary evidence was presented. (*Estate of Fain, supra,* 75 Cal.App.4th at p. 992). Benjamin's request for a review for substantial evidence is impossible: we cannot conduct a meaningful evidentiary review when the testimonial evidence is missing. (See *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-188.) For this reason, Benjamin's attempt to equate the evidence tendered in this case to that deemed insufficient in other cases like *Estate of Mann* (1986) 184 Cal.App.3d 593 falls short.[1]

The related contention that the statement of decision needs to describe every supporting fact or piece of evidence is misguided. A statement of decision is required only on the principal controverted issues specified in the request; other issues are waived. (*In re Marriage of Hebbring* (1989) 207 Cal.App.3d 1260, 1274.) Also, a " 'statement of

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[1] In *Estate of Mann*, a jury found the decedent lacked the capacity to execute a will and the execution was obtained through undue influence. (*Id*. at p. 599.) The reviewing court reversed after finding the verdict unsupported by the evidence. (*Ibid*.)

decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case.' " (*Thompson v. Asimos, supra*, 6 Cal.App.5th at p. 983.) The " ' "ultimate fact" generally refers to a core fact, such as an essential element of a claim.' " (*Ibid*.) A court "is not expected to make findings with regard to 'detailed evidentiary facts or to make minute findings as to individual items of evidence.' " (*Ibid*.) Even if a court fails to make a finding on a particular matter, " 'the omission is harmless error unless the evidence is sufficient to sustain a finding in favor of the complaining party which would have the effect of countervailing or destroying other findings.' " (*Ibid*.)

Here, Benjamin did not identify valuation of the property as a controverted issue to be discussed in the statement of decision. His failure to do so is fatal to his valuation challenge on appeal. (*In re Marriage of Hebbring, supra*, 207 Cal.App.3d at p. 1274.) He also does not suggest that any purportedly missing findings were ultimate facts or material issues in this case. Nor can he show harm from any omissions. Again, we cannot reverse a judgment without reviewing the entire record. (Cal. Const., art. VI, § 13; *People v. Hopper* (1969) 268 Cal.App.2d 774, 778.)

And third, Benjamin insists the court relied on false evidence, reached improper inferences, and improperly discounted and credited various testimonies. These claims have no traction in a review for substantial evidence. We do not reweigh the evidence, make our own factual inferences that contradict those of the trial court, or second guess the trial court's credibility determinations. (*Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.)

V

Unclean Hands

Benjamin contends the trial court improperly deemed evidence of Albert's unclean hands irrelevant. In support, he asks us to take judicial notice of two documents: (1) an April 23, 2021 grant deed by mother as trustee of the trust granting the property to

mother; and (2) an April 23, 2021 grant deed by mother deeding the property to the trust (the April 23 grant deeds). He contends these documents show that Albert "bullied" mother into signing them. Given the state of the record, we must reject this contention and deny the request for judicial notice. The trial court found that Albert's actions after April 16, 2021, were reasonable and had no wrongful intent. Without a reporter's transcript, we must presume these findings were supported by substantial evidence. As stated, we do not reweigh the evidence. (*Carrington v. Starbuck Corp*. (2018) 30 Cal.App.5th 504, 518.)

Benjamin also contends the trial court should have considered the validity of the April 23 grant deeds because knowing which trust holds the property is clearly relevant to the proceeding. But the record indicates the trial court was never asked to determine the validity of those documents. In its statement of decision, the trial court noted that Albert was not alleging they were valid, and there is no indication that Benjamin asserted that allegation either. A specific argument that was never raised before the trial court cannot be raised for the first time on appeal. (*L. Byron Culver & Associates v. Jaoudi Industrial & Trading Corp.* (1991) 1 Cal.App.4th 300, 306, fn. 4.)

DISPOSITION

The March 2023 order is affirmed. Albert is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

/s/
MESIWALA, J.

We concur:

/s/
ROBIE, Acting P. J.

/s/
FEINBERG, J.