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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Estate of PYARA JAGAR, Deceased.	
SATYA DEVI JAGAR, Petitioner and Appellant, v. JUANITA JAGAR, VIJAY JAGAR, RAJESH JAGAR and DINESH JAGAR, Objectors and Respondents.	A126750 (Alameda County Super. Ct. No. HP05212356)

Satya Devi Jagar appeals from the probate court's orders relating to attorney's fees and costs and characterization of one of the assets of the estate of decedent Pyara Jagar. She contends the probate court erred in: (1) denying her motion to correct a court order that did not accurately reflect the parties' stipulation regarding characterization of an asset of the estate; (2) denying her motion for attorney's fees and costs; and (3) ordering her to pay some of the attorney's fees and costs incurred by Pyara's[1] former wife, Juanita. We reject the contentions and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

Satya and Pyara met on June 25, 2003, and were married in a religious ceremony in India on June 26, 2003, pursuant to the provisions of The Hindu Marriage Act of

[1] Because all of the parties in this case share the same last name, we will refer to them by their first names for clarity and ease of reference.

1955 of India. The marriage was registered in October 2003 pursuant to The Hindu Marriage Registration Rules of India. Satya entered the United States and began living with Pyara on July 17, 2004. Pyara died on April 16, 2005, and Satya's daughter Priya was born on April 18, 2005.[2]

Pyara died intestate and Satya filed a petition to probate the estate as the surviving spouse. Vijay, Pyara's oldest son from his former marriage to Juanita, filed a competing petition, and Vijay's brothers Rajesh and Dinesh joined him in filing an objection to Satya's petition. The brothers claimed Satya "ha[d] an extremely limited command of the English language," had "purportedly" been married to Pyara for only a short period of time, and had "very little, if any, knowledge of the complex financial affairs of decedent." They asserted that Vijay, who was "groomed by his father to participate in and take over the family business," was better equipped to manage the estate. A special administrator was later appointed to administer the estate.

On December 12, 2005, Satya filed a petition for a family allowance pending administration of the estate on the ground that she was Pyara's surviving spouse and the mother of their minor child. Vijay, Rajesh and Dinesh filed an objection to the petition stating they "contest[ed] and object[ed] to [Satya's] standing to request support or any other form of payment from the estate. Juanita also filed an objection stating that Satya is not entitled to a family allowance "[u]ntil such date as a determination is made by this court that [she] is the surviving spouse . . . ." Juanita acknowledged Satya may be entitled to a family allowance as the mother of Priya but that the amount she sought was excessive. Juanita also filed a creditor's claim stating she and Pyara were married for 23 years and that Pyara "fraudulently induced [her] into signing the dissolution documents including [a marital settlement agreement]" by telling her he was "in jeopardy of being forced to file for bankruptcy" and that they needed to dissolve their marriage and divide their property in order to protect their assets. She requested that the dissolution of marriage and the marital settlement agreement be set aside or,

[2] The facts in this paragraph are taken from the parties' statement of stipulated facts filed before the November 17, 2008, trial.

alternatively, that she receive $100,000 plus interest from the estate as set forth in the marital settlement agreement.

A judgment was entered on or about September 18, 2007, determining there were five beneficiaries of the estate, as follows: Satya, 30 percent; Priya, 25 percent; Vijay, 15 percent; Rajesh, 15 percent; and Dinesh, 15 percent. In or about November 2007, Juanita served an offer to compromise her claim. On December 3, 2007, special administrator Duane M. Leonard filed a notice of acceptance of Juanita's claim and of Vijay's offer to have judgment entered as follows: (a) all debts as determined by the special administrator shall be paid out of the estate; (b) Juanita shall receive $99,500 plus interest at the rate of 8 percent per annum from July 7, 2006; (c) funds shall be set aside to pay the costs of actual and anticipated expenses of administering the estate; (d) the remaining assets of the estate shall be distributed as follows: (i) 30 percent to Satya; (ii) 25 percent for the benefit of minor child Priya; and (iii) 15 percent to each of the adult sons; and (e) all parties shall bear their own attorney's fees and costs. Satya did not accept the offer.

Juanita filed a motion for summary adjudication on her creditor's claim and the court entered summary judgment in her favor in the amount of $100,000. The court found that the undisputed evidence showed Juanita had not been paid the $100,000 to which she was entitled under the marital settlement agreement. The court further stated, "even if Satya's contest of Juanita's claim against the Estate were not barred by Probate Code § 9254(b), neither Satya nor Priya . . . [has] presented any competent evidence supporting Satya's contest to Special Administrator Duane Leonard's allowance of Juanita's claim in the amount of $100,000, or demonstrating that the amount decedent owed to Juanita pursuant to the Judgment of Dissolution has been satisfied. Exhibit A to the Opposition of Priya . . . is not competent evidence of this.[3] [¶] Furthermore, neither Satya nor Priya . . . filed an opposition separate statement.

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[3] Pyara's opposition to Juanita's motion for summary judgment is not a part of the record on appeal and it is therefore unclear what document Pyara attached to her opposition as "Exhibit A."

That in itself constitutes a sufficient ground for granting the Motion. (See Code of Civil Procedure § 437c(b)(3)."

On November 17, 2008, the date set for trial, Satya's attorney informed the court that the parties had reached an agreement "that Satya will receive a $50,000 one-time payment for the family allowance." He stated there was no agreement as to attorney's fees and costs. The attorney for Juanita, Vijay, Rajesh and Dinesh added that the parties had also agreed that two individuals owed a total of $30,000 to Pyara at the time of his death and that Satya received $30,000 from those individuals after Pyara died. Satya's attorney stated, "whether [the $30,000] is community or separate property, whatever, is not being resolved at this time. But the fact that the money was owed to Pyara at the time of his death and [was] thereafter paid and received by Satya is stipulated."

The probate court apparently issued an order on March 29, 2009,[4] which, according to Satya, stated in part: "Prior to his death the decedent loaned money to Sukhwinder Kaur Madahar and to Pawan Jeet. After the death of the decedent, the sum of $30,000 was repaid to Satya Jagar by Sukhwinder Kaur Madahar and to [sic] Pawan Jeet. *The sum of $30,000 shall be deemed an advance distribution to Satya Jagar by the Special Administrator of a portion of her share of the estate of the decedent*." Satya filed a motion to "correct" the March 29, 2009, order claiming the order did not accurately reflect the parties' November 17, 2008, stipulation because the parties never agreed the $30,000 Satya received would be treated as an advance distribution. Satya also filed a motion arguing the $30,000 should not be deemed an advance distribution and requesting it be characterized as community property.

On April 16, 2009, Satya filed a request for attorney's fees and costs on the ground that respondents unreasonably refused to acknowledge the validity of her marriage to Pyara, thereby causing her to incur fees and costs in proving her entitlement to a family allowance. On April 30, 2009, Juanita filed a request for attorney's fees and

[4] Satya refers to the order, which is not part of the record, as the March 29, 2009, order. However, the Registry of Actions indicates the order was filed April 1, 2009. For consistency's sake we will refer to the order as the March 29, 2009 order.

costs on the ground that Satya unreasonably objected to her claim for $100,000 and refused to accept her offer to compromise her claim for $99,500. She asserted she was entitled to fees and costs under Probate Code section 9354 based on Satya's unreasonable challenge to her creditor's claim, and under Code of Civil Procedure section 998 based on the court's order awarding her more than the $99,500 for which she had offered to settle her claim. Apparently in response to Satya's argument that Juanita's motion for fees and costs was not timely filed, Juanita's attorney filed a declaration describing the various efforts he made in his attempt to obtain a hearing date and a "reservation number," which he understood he was required to do before he could file the motion. He explained the motion had been ready to be filed April 15, 2009, but that he could not file it until April 30, 2009, when he was finally able to obtain a hearing date and reservation number after repeated calls to court clerks and several trips to the courthouse. He declared he called Satya's attorney on April 24, 2009, and informed him of his intent to file a motion for fees and costs on behalf of Juanita. Satya's attorney agreed to have Juanita's motion consolidated with Satya's motion for fees and costs and for the two motions to be heard on the same date.

A hearing was held on June 8, 2009, to resolve all outstanding issues: (1) Satya's motion to correct the March 29, 2009, order; (2) Satya's motion to have the $30,000 characterized as community property; (3) Satya's motion for attorney's fees and costs; and (4) Juanita's motion for attorney's fees and costs. At the beginning of the hearing, the court agreed with counsel for Juanita, Vijay, Rajesh and Dinesh that Satya's motion to correct the order and her motion to have the $30,000 characterized as community property raised "the same issue" and that the court's order characterizing the $30,000 as community property or separate property would render moot the issue of whether the order accurately reflected the parties' stipulation.

Vijay testified he had lived with his father until July 2004 and was familiar with his father's finances. Friends and family members who "came on hard times" sometimes asked his father for money, and at the time of his father's death, there were a number of individuals who were indebted to him, including Sukhwinder Kaur Madahar

and Pawan Jeet. Vijay testified that the loans to Madahar and Jeet were made "roughly around 2003 and earlier" and totaled $30,000. He testified that many of the recent financial documents were missing because Satya's family had taken them from the home after Pyara's death. Vijay took some of the older documents that were left and gave them to his prior attorney. After Vijay testified, the parties agreed to continue the hearing based on their understanding that special administrator Leonard might be in possession of documents relating to the $30,000 loan.

At the continued hearing on August 24, 2009, Leonard testified that the issue of whether the $30,000 loan was community property or separate property was "moot" because the parties had already agreed to a proportional distribution of the estate and that distribution "supersede[d]" any issue regarding characterization. He testified the $30,000 would simply be considered another asset of the estate that would be subject to distribution among the parties pursuant to the agreed upon percentages of distribution, i.e., 30 percent to Satya, 25 percent to Priya, and 15 percent to each of the three adult sons.

The probate court issued an order on August 25, 2009, denying Satya's motion for correction of the March 29, 2009, order and denying her motion to characterize the $30,000 loan as community property. As to her motion for characterization, the court stated, "The September 21, 2007 judgment provides for the allocation and distribution of all of the net assets of the estate without regard to any consideration of such assets as separate property or community property, and is thus determinative of this issue." The court also denied Satya's motion for recovery of litigation costs "[p]ursuant to Probate Code [s]ection 1002." Finally, the court granted Juanita's motion for recovery of litigation costs, stating, "Pursuant to [Code of Civil Procedure] [s]ection 998 and Probate Code [s]ection 9354, Juanita is awarded the sum of $9,000 on her motion for the recovery of litigation costs, including attorney's fees, which amount shall be charged by Duane Leonard, as the Special Administrator, against the next distribution to Satya as a beneficiary of the estate." Satya filed a timely notice of appeal.

DISCUSSION

Correction of the March 29, 2009, order

Satya contends the probate court erred in denying her motion to correct the March 29, 2009, order to accurately reflect the parties' stipulation of November 17, 2008. She argues that because the parties never agreed that the $30,000 she received would be treated as an advance distribution, the court exceeded its authority in issuing an order that was "inconsistent with or expand[ed] the stipulation of the parties."

Preliminarily, as noted, the March 29, 2009, order is not a part of the record on appeal. We are therefore unable to determine whether the court issued the order pursuant to the parties' November 17, 2008, stipulation or whether it did so pursuant to other proceedings that may have taken place between November 17, 2008, and March 29, 2009. Moreover, because Satya quoted only three sentences from the March 29, 2009, order, we are unable to determine whether the sentences were taken out of context. We cannot, for example, disregard the possibility that other portions of the order would have explained or provided insight into the court's reasoning in ordering the $30,000 to be treated as an advance distribution. On appeal, we presume the judgment to be correct and indulge all intendments and presumptions to support it regarding matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; accord *People v. Garza* (2005) 35 Cal.4th 866, 881; *Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) An appellant has the burden to show error (*People v. Nitschmann* (1995) 35 Cal.App.4th 677, 684) and also bears the burden of overcoming the presumption of correctness by providing an adequate record that affirmatively demonstrates error (See *Defend Bayview Hunters Point Com. v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859-860). Satya has not met her burden of showing error.

Moreover, the issue of whether the March 29, 2009, order accurately reflected the parties' November 17, 2008, stipulation was rendered moot by the court's later decision denying Satya's motion to have the $30,000 characterized as community property. As noted, judgment was entered in September 2007 setting forth the

distribution percentages for each of the beneficiaries of the estate. Thus, as special administrator Leonard testified, and the court agreed, all assets of the estate were to be distributed among the beneficiaries according to those percentages, and characterization of each of the assets of the estate—including the $30,000—as community property or separate property was unnecessary. Because Satya was entitled to 30 percent of the assets of the estate pursuant to the September 2007 judgment, she was entitled to 30 percent of $30,000 regardless of whether it was community property or separate property. Based on the parties' stipulation that Satya had already received the $30,000, the court's orders treating the $30,000 as an advance distribution and declining to characterize it as community property or separate property were proper.

Satya's motion for attorney's fees and costs

Satya contends the probate court erred in denying her motion for attorney's fees and costs. We disagree.

Satya appears to make two arguments in support of her contention. First, she argues she was entitled to attorney's fees and costs because respondents "put roadblocks in the way of the speedy distribution of the estate" by refusing to acknowledge for three years that she was Pyara's surviving spouse. The argument fails because Satya has not shown that respondents acted unreasonably in contesting the validity of the marriage. It appears respondents stipulated for settlement purposes that Satya was the surviving spouse. There is nothing in the record before us indicating the court made a finding that the marriage was valid or that respondents acted unreasonably in contesting its validity, and there is insufficient information for us to determine whether such findings should have been made. The court denied Satya's motion for attorney's fees and costs under Probate Code section 1002, which authorizes the court to, "in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require." On the record before us, we cannot conclude that the interests of justice required the court to award Satya her attorney's fees and costs incurred because of respondents' refusal to acknowledge the validity of the marriage.

Second, Satya cites *Estate of Filtzer* (1949) 33 Cal.2d 776 (*Filtzer*), in support of her argument that a court is *required* to award fees and costs to all individuals entitled to a family allowance. *Filtzer*, however, merely held the probate court did not err in issuing an award of attorney's fees for "services rendered 'in connection with [the] petition for family allowance[,]' " where the court had found that a fees award was " 'necessary for [the minor child's] support and maintenance, just the same as room and board or anything else.' " (*Id.* at p. 781.) *Filtzer* did *not* hold that an attorney's fees award was mandatory in every case in which a family allowance was awarded. Here, in contrast to *Filtzer*, Satya received a family allowance pursuant to the parties' stipulation, and the court never made a finding that an award of fees and costs was "necessary" for the support and maintenance of the minor child. The court was not required to award attorney's fees and costs to Satya.

Juanita's motion for attorney's fees and costs

Satya contends the probate court erred in ordering her to pay some of Juanita's attorney's fees and costs. We disagree.

Probate Code section 9354, subdivision (c), provides, "The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees." Here, as noted, the court granted summary adjudication in favor of Juanita on her creditor's claim. Thus, Juanita was entitled to court costs as the "prevailing party."

The record also supports the court's implied finding that Satya acted unreasonably in defending against Juanita's creditor's claim. It was undisputed Juanita and Pyara had entered into a marital settlement agreement under which Juanita was entitled to receive $100,000. Juanita filed her creditor's claim on January 31, 2006, and special administrator Leonard accepted the claim almost immediately, in February 2006. Satya did not dispute the validity of the marital settlement agreement but refused to accept Juanita's offer to compromise her claim for $99,500 plus interest, thereby requiring Juanita to file a motion for summary adjudication. In opposing the summary

adjudication motion, Satya did not present any "competent evidence" to support her position that Juanita had already received the $100,000 and failed to file "an opposition separate statement" as required by the Code of Civil Procedure section 437c, subdivision (b)(3).

Satya contends she had a "rational basis" for objecting to Juanita's claim based on "Pyara's statement, validated by Vijay, that Pyara's obligations to Juanita had been satisfied." Because Satya's opposition to Juanita's summary adjudication motion is not a part of the record on appeal, we are unable to determine what this "statement" was, whether the statement was in fact "validated by Vijay," and whether any of this evidence was presented to the probate court in connection with the summary adjudication motion. Satya points out there was a document entitled "Personal Will of Pyara Jagar" dated September 15, 2003, which stated in part: "As of today my ex-wife Juanita has been paid in full per our divorce settlement."[5] Although it appears Satya presented this document to the court at the time she filed her motion for characterization of the $30,000, there is nothing in the record indicating this document was authenticated or presented to the court in opposition to the motion for summary adjudication. We reiterate that it is the appellant's burden to overcome the presumption of correctness of a judgment by providing an adequate record that affirmatively demonstrates error. (See *Defend Bayview Hunters Point Com. v. City and County of San Francisco*, *supra*, 167 Cal.App.4th at pp. 859-860.) Satya has not done so.[6]

Satya asserts the court's order was nevertheless improper because Juanita's motion for attorney's fees and costs was untimely filed. California Rules of Court rule 3.1700(a)(1)[7] provides that "[a] prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of mailing of the notice of

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[5] The document does not refer to the $100,000.

[6] In light of our conclusion the attorney's fees and costs award was proper under Probate Code section 9354, we need not, and do not, discuss whether the award was also proper under Code of Civil Procedure section 998, subdivision (c).

[7] All references to the rules are to the California Rules of Court.

entry of judgment . . . or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." Rule 3.1702(b)(1) provides, "A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court . . . must be served and filed within the time for filing a notice of appeal under rules 8.104 [the earlier of 60 days after service of the notice of entry of judgment or 180 days after entry of judgment] and 8.108 [extending the time limitations] in an unlimited civil case . . . ."

Although Juanita's motion was not timely filed,[8] the probate court had broad discretion to extend the time for filing upon a showing of "good cause." (Rule 3.1702(d); *Lee v. Wells Fargo Bank* (2001) 88 Cal.App.4th 1187, 1198; *Russell v. Trans Pacific Group* (1993) 19 Cal.App.4th 1717, 1724.) When Satya raised the untimeliness issue in opposition to Juanita's attorney's fee motion, Juanita filed a reply brief that included evidence supporting her position that the motion was late due to excusable neglect, e.g., a declaration by her attorney regarding the good faith efforts he made in attempting to file the motion and the notice he provided to Satya's attorney of his intent to file the motion. The probate court made an implied finding that this evidence constituted good cause for an extension. Satya suggests Juanita was required to file a separate request for an extension of time or a separate motion for relief under Code of Civil Procedure section 473, not merely address the matter in her underlying attorney's fee motion. Rule 3.1702(d), however, does not require a separate motion, and Satya does not contend she was prejudiced by the manner in which Juanita made her good cause showing. There was no abuse of discretion.

DISPOSITION

The orders are affirmed. In view of the fact that respondents' brief contains no references to the record to support the facts and cites no legal authority to support the arguments, the parties shall bear their own costs on appeal. (See *Hearn v. Howard*

[8] The motion was filed on April 30, 2009, 182 days after the October 30, 2008, mailing by the clerk of the order granting the motion for summary adjudication and 183 days after the October 29, 2008, entry of the order.

(2009) 177 Cal.App.4th 1193, 1210 [parties were required to bear their own costs on appeal "[i]n view of the unhelpful nature of the respondent's brief"].)

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.