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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Estate of ARNOLD MARKS, Deceased.

JASON RUBIN as Administrator, etc., et al.,

Petitioners,

v.

CITY OF HOPE et al.,

Objectors and Appellants;

EMMA LARA et al.,

Claimants and Respondents.

B303281

(Los Angeles County Super. Ct. No. 18STPB03316)

APPEAL from an order of the Superior Court of Los Angeles County, Michael C. Small, Judge. Affirmed

Rodriguez, Horii, Choi & Cafferata, Reynolds T. Cafferata, Catherine Karayan Wilbur; Law Offices of Tara L. Cooper, Tara L. Cooper; Benedon & Serlin, Gerald M. Serlin, and Judith E. Posner for Objectors and Appellants Children's Hospital Los Angeles, ALSAC/St. Jude Children's Research Hospital and City of Hope.

Barbaro, Chinen, Pitzer & Duke, Gloria S. Pitzer, Philip Barbaro, Jr.; Greines, Martin, Stein & Richland, and Marc J. Poster for Claimants and Respondents Elizabeth Marks and Veronique Marks.

Sacks, Glazier, Franklin & Lodise, Robert N. Sacks, Margaret G. Lodise, and Addison H. DiSesa for Claimants and Respondents Emma Lara, Mitzi Lara and Karla Marks

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In this probate proceeding concerning the estate of Arnold Marks, deceased, the probate court interpreted the decedent's will as making a specific bequest of certain real properties to Emma Lara, Karla Marks, Elizabeth Marks, and Veronique Marks.[1] As a result, the properties were not included in the residue of the estate, which Arnold had bequeathed to City of Hope, Children's Hospital Los Angeles, and St. Jude Children's Research Hospital (collectively, the charities). The charities appealed. We affirm.

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[1] Because of common surnames among some of the parties and testamentary beneficiaries, we will refer to individuals by their first names for the sake of clarity and readability. We intend no disrespect.

## FACTUAL AND PROCEDURAL SUMMARY

### A. *Background*

Arnold Marks was the sole shareholder of Harry Marks, Inc. (HMI), a business that built and managed industrial properties. Arnold also owned commercial properties outside of HMI, including properties on Leadwell Street in North Hollywood (the Leadwell properties), Strathern Street in Van Nuys (the Strathern property), and Lassen Street in Chatsworth (the Lassen properties).

Arnold had two brothers, Jerome and Donald, and two nieces, Elizabeth and Veronique.

In 2007, Arnold and Karla married. Emma is Karla's mother. Karla has a sister, Mitzi Lara.

Arnold and Karla divorced in 2014.[2]

### B. *The 2015 Will*

In a three-page holographic will dated August 18, 2015, Arnold bequeathed his residence, together with certain personal property and the contents of certain storage units, to Emma.

Regarding his corporation, Arnold wrote:

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[2] According to Karla, after her marriage to Marks in 2007, Marks was diagnosed with Parkinson's disease and he "insisted that [they] divorce, explaining that he felt it was unfair to [Karla] under the circumstances." Although Karla "disagreed with [Marks, they] ultimately entered into an amicable divorce in 2014." Karla remarried in 2019 and changed her last name to Cruz.

"Harry Marks INC. to go to

Emma de Lara
Karla Marks
Mizi [*sic*] Lara, Elizabeth Marks, Veronique Marks
There at 1,500 shares of Common Stock
there are 200 Shares of Voting Stock
All.
Jerome Marks, Donald Marks, equal shares."

At this point, Arnold drew an arrow beginning at a point in front of the name "Jerome Marks" and drawn vertically to the left of the description of the number of shares of common and voting stock to a point just below "Mizi['s]" name. The will continues:

"The 1,500 shares to be divided equally
among the above. The 200 shares of
voting stock ~~to Donald Marks~~
Emma de Lara—101 shares ove [*sic*] voting stock
Veronique Marks 99—shares of voting stock."

On the bottom of the first page and the top half of the second page, the will contains specific monetary bequests. These bequests include $250,000 each to Karla, Emma, Jerome, Elizabeth, and Veronique. Smaller amounts are bequeathed to numerous other individuals, including Donald, who was left $10,000.

On the lower half of page two, the will states the following:

"The following properties I own to go to

(1) 13150-13152 ~~Lankershim~~ Leadwell Ave
North Hollywood, CA 91605
13154, 13156, 13158, 13160, 13162, 13164 Leadwell
equal shares to:
Emma de Lara
Karla Marks
Elizabeth Marks
Veronique Marks

(2) 15904 Strathern St.
Van Nuys CA. 91406
Chatsworth 91311

(3) 20600, 20610, 20620, 20630—Lassen."

On the third page of the will, the document states:

"The remainder of my
estate—to be shared
equally by the following
~~chari~~

Children[']s Hospital Los Angeles,
St. Judes Children Research Hospital
City of Hope, Los Angeles."

### C. *Arnold's Death, Probate of the 2015 Will, and the Administrator's Petition for Instructions*

Arnold died on March 28, 2018.

On April 9, 2018, Karla filed a petition for probate of the 2015 will. In addition to the three pages of the 2015 will described above, Karla attached to the petition two additional handwritten pages found together with the will, which identifies particular properties and accounts held by HMI or Arnold, and

the names of numerous individuals. In admitting the will to probate, the court excluded the two additional pages.[3]

In June 2018, the court appointed Jason Rubin and Maya Rubin as administrators of the estate.

In February 2019, the administrators filed a petition for instructions to determine whether Arnold had bequeathed the Strathern and Lassen properties to Karla, Emma, Elizabeth, and Veronique or, alternatively, included them in the residue of the estate and thereby left them to the charities.[4] According to the administrators, the will is patently ambiguous with respect to the bequests of these properties and the court should interpret the will as devising them to Karla, Emma, Elizabeth, and Veronique.

In response to the petition, the charities argued that the will is unambiguous, and that Arnold intended that the Strathern and Lassen properties be included in the residue of the estate and distributed to them. They further argued that, if the will is ambiguous, extrinsic evidence—including a purported will Arnold made in 2011, an unsigned handwritten document Arnold purportedly prepared in 2018 (which the charities describe as

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[3] Most, but not all, of the names appearing on the excluded two pages are among the express beneficiaries listed in the 2015 will. The names of the charities do not appear on the excluded two pages.

[4] According to an inventory and appraisal filed in the probate proceeding, the Strathern property is valued at $2,000,000, and the Lassen properties are valued at $1,750,000.

"testamentary notes") and Arnold's history of making gifts to the charities during his life—supported their interpretation.[5]

Karla, Emma, Elizabeth, and Veronique agreed that the will is unambiguous, and argued that its plain language requires distribution of the Strathern and Lassen properties to them. They further argued that extrinsic evidence, if considered, supports their interpretation. Such evidence included Karla's declaration testimony that Arnold had "always treated the [Leadwell, Strathern, and Lassen properties] as one group," and "as a distinct group in all business dealings, including items such as purchasing insurance on the properties, bank accounts, and other business purposes."[6]

### D. *The Court's Ruling*

At a hearing held on October 11, 2019, the court determined "that the will is clear and unambiguous on its face, and it clearly and unambiguously directs the following result: [¶] The Strathern and Lassen properties are to go to the four individuals, not the charities."

In response to counsel's requests for rulings on the parties' proffers of extrinsic evidence, the court made the following comments. The evidence of Arnold's inter vivos gifts to the charities, the court explained, "does not reveal latent ambiguity" and is "not probative extrinsic evidence." The purported 2011 will that the charities offered was inadmissible hearsay, which the court stated it was "not considering." The court noted,

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[5] The Marks's inter vivos gifts to the charities totaled approximately $10,000. It does not appear that he made any gifts to the charities after 2015.

[6] The charities did not object to Karla's declaration.

however, that if it did admit the document into evidence, the document does not "reveal a latent ambiguity in the 2015 will."

Regarding the statements in Karla's declaration concerning Arnold's treatment of the properties as a single group for business and insurance purposes, the court stated that the statements are "extrinsic evidence that would support the [court's] interpretation of the will," but that the court did not "need to consider that declaration."

It does not appear that the court made an explicit ruling regarding the two handwritten pages found together with the 2015 will or the document the charities describe as Arnold's 2018 testamentary notes.

On November 4, 2019, the court issued a formal order stating that the 2015 will "is unambiguous in making a specific devise of the Strathern and Lassen properties" to Emma, Karla, Elizabeth, and Veronique. The order further stated: "Extrinsic evidence is inadmissible to construe the [w]ill because there is neither a latent, nor patent ambiguity in the [w]ill, and the [w]ill is not reasonably susceptible to any interpretation other than that the Strathern and Lassen properties are specifically devised to Emma Lara, Karla Marks, Elizabeth Marks, and Veronique Marks."

The charities timely appealed.[7]

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[7] The court's order is appealable. (Code Civ. Proc., § 904.1, subd. (a)(10); Prob. Code, § 1303, subd. (f).)

## DISCUSSION

### A. *Standard of Review and Principles of Interpretation*

Where, as here, the trial court's interpretation of the will did not turn on issues of credibility or conflicts in extrinsic evidence, we interpret the will independently. (*Estate of Dodge* (1971) 6 Cal.3d 311, 318; *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865.)

" 'The paramount rule in the construction of wills, to which all other rules must yield, is that a will is to be construed according to the intention of the testator as expressed therein, and this intention must be given effect as far as possible.' " (*Estate of Russell* (1968) 69 Cal.2d 200, 205; accord, *Estate of Goyette* (2004) 123 Cal.App.4th 67, 70; see also Prob. Code, § 21102, subd. (a) ["[t]he intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument"].) We construe the parts of a will in relation to each other "so as, if possible, to form a consistent whole" (Prob. Code, § 21121), and interpret the will so as to "give every expression some effect, rather than . . . render any of the expressions inoperative." (*Id.*, § 21120). An interpretation that prevents intestacy or failure of a transfer is preferred over one that will result in an intestacy or failure of a transfer. (*Ibid.*)

In ascertaining the testator's intent, we may consider the will in light of the circumstances surrounding its execution and may use "extrinsic evidence to aid in construing the will if we find that the will is 'ambiguous' or, more precisely, that in the light of both the language of the will and the circumstances under which it was made, the will is reasonably susceptible of more than one interpretation." (*Estate of Dodge*, *supra*, 6 Cal.3d at

p. 318; see also *Estate of Duke* (2015) 61 Cal.4th 871, 879 [courts may consider extrinsic evidence to determine whether a will is ambiguous and to clarify ambiguities].)

### B. *Analysis*

Arnold's will has, overall, a coherent structure. At the outset, Arnold bequeathed his residence, some personal property, and the contents of certain storage units to Emma; next, Arnold disposed of his interests in HMI; third, he made specific monetary bequests to certain individuals; fourth, he disposed of the commercial properties he owns outside of HMI; and, lastly, he gave the "remainder" of his estate to the charities. This structure unambiguously indicates that Arnold treated the commercial properties, including the Strathern and Lassen properties, as separate from the "remainder," or residue, of the estate. Indeed, if we viewed these properties as being included in the residue, we would render Arnold's references to them as surplusage because the properties would be within the estate's residue if they were not mentioned at all. Such a construction of the will should be avoided. (See Prob. Code, § 21121; *Estate of Lindner* (1978) 85 Cal.App.3d 219, 225 [interpretation of will that renders language mere surplusage is "repugnant to basic principles of construction"].) The fact that Arnold numbered the Leadwell, Strathern, and Lassen properties as (1), (2), and (3), respectively, further supports the interpretation that all these properties were to be treated similarly, at least with respect to whether they are within or outside the residue of the estate.

If, as we construe the will, Arnold did not intend the Strathern and Lassen properties to pass under the residual clause, the question is: To whom did Arnold bequeath them? According to the charities, no one. Arnold, they argue, failed to

specify beneficiaries for these properties and, as a result, the bequests "failed" and the properties became part of the residue by operation of law. (See Prob. Code, § 21111, subd. (a)(2) [if a bequest of property fails for any reason and the will does not provide for an alternative disposition but does provide for the transfer of a residue, the property becomes a part of the residue transferred under the will].) We reject this interpretation.

The part of the will addressing the commercial properties begins, "The following properties I own to go to," which is followed by a list of Arnold's commercial properties—the Leadwell, Strathern, and Lassen properties—and the persons to whom they "go." The persons so listed are Emma, Karla, Elizabeth, and Veronique. Although Arnold's placement of the devisees' names—after the Leadwell properties and before the Strathern and Lassen properties—is unartful, an interpretation that leaves the commercial properties to the named individuals is preferred over the charities' interpretation, which "will result in . . . failure of a transfer." (Prob. Code, § 21120.)

Moreover, the troublesome placement of the names of the devisees may be attributable to Arnold having written his holographic will without the aid of counsel or the benefit of editorial input. Indeed, the document is replete with awkward syntax and grammar, scratched-out words, misspellings, omitted and superfluous words, and inappropriate or missing punctuation. Viewing the bequests in this light, Arnold's arrangement of properties and the names of the devisees does not indicate the absence of beneficiaries for the Strathern and Lassen properties, but rather the testator's lack of drafting skill and an inexpert "arrangement of paragraphs." (See *Estate of Rowley* (1954) 126 Cal.App.2d 571, 576 ["[i]t is not to be supposed that

a testator who writes a will, without legal aid, will use the same niceties of language, punctuation, and arrangement of paragraphs as would be used by an expert draftsman].) Even if, as the charities assert, Arnold's format of the commercial property bequests "is flawed under the ordinary rules of grammar," the interpretation of a will is not governed by "the failure to observe grammatical rules" (*Estate of Boyd* (1957) 148 Cal.App.2d 821, 826), particularly when "the entire will discloses that the testator paid little or no attention to [such] matters." (*Estate of Williams* (1952) 113 Cal.App.2d 895, 898; see also *Estate of Lampkin* (1962) 203 Cal.App.2d 374, 376 [a will written by an "inexperienced . . . person . . . should be construed more liberally than if it had been drawn by an expert"].)

The charities' reliance on cases holding that ineffective or failed bequests pass to the estate's residue and that residuary clauses should be broadly and liberally construed is misplaced because, as we construe the will, the bequests of the Strathern and Lassen properties do not fail and, because the properties are not within the residuary clause, we have no occasion to construe that clause.

Lastly, the charities have not established error in the court's evidentiary rulings. The charities offered the purported 2011 will for the truth of hearsay statements therein and, as the trial court explained, the document is not within any exception to the hearsay rule. In any event, the document sheds no light on the testator's intent regarding the 2015 will. The evidence of Arnold's inter vivos gifts to the charities, amounting to less than $10,000 over several years, is not evidence of an ambiguity in the 2015 will. Even if the gifts are admissible for some purpose, they

have no relevance to the issue of the viability of the bequests of the Strathern and Lassen properties. The 2018 testamentary notes are likewise irrelevant.

For the foregoing reasons, we interpret the 2015 will as devising the Strathern and Lassen properties to Emma, Karla, Elizabeth, and Veronique.

## DISPOSITION

The November 4, 2019 order granting the administrator's petition for instructions is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

CRANDALL, J.*

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* Judge of the San Luis Obispo County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.