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Conservatorship of Peters

### **Conservatorship of Peters**

07/25/10

#### **Conservatorship of Peters**

Filed 7/23/10 Conservatorship of Peters CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Conservatorship of LEE PETERS

B216514

CASEY PETERS et al.,

(Los Angeles County

Objectors and Appellants,

Super. Ct. No. BP085494)

v.

NORA HAMILL et al.,

Petitioners and Respondents.

APPEAL from orders of the Superior Court of [Los Angeles County](#),  
Aviva K. Bobb, Judge. Affirmed.

Casey Peters and Marilyn Peters, in pro. per., for Objectors and Appellants.

Law Offices of Victoria Velarde and Victoria Velarde for Petitioners and Respondents.

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**INTRODUCTION**

Appellants Casey Peters and Marilyn Peters appeal orders awarding attorney fees and court costs to respondents Kathryn Peters and Nora Hamill. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

This is a family dispute over the conservatorship of Lee Peters. Between April 23, 2004 and January 17, 2006, respondents were represented by attorney Jeffrey Condon in connection with their initial petition to be appointed as co-conservators, their subsequent petition to appoint Frumeh Labow as conservator, and related litigation. Ms. Labow was named as the conservator pursuant to respondents petition. However, due to alleged harassment by appellants, Ms. Labow resigned from that position.

Respondents contend that they were appointed co-conservators of Lee Peters and the estate of Lee Peters on April 27, 2006 and continued in that role until approval of their final account by the probate court on May 18, 2009. Respondents further contend that attorney Victoria Velarde represented them as co-conservators. Appellants do not dispute that respondents were appointed co-conservators but contend that attorney Velarde represented them as individuals in two unrelated [civil cases](#).<sup>[1]</sup>

On March 12, 2009, respondents filed a petition for attorney fees and allowances. In that petition, respondents sought to recover \$67,816 in attorney fees and \$4,015.79 in costs associated with legal services of Jeffrey Condon and his firm, Condon & Condon.<sup>[2]</sup> Respondents also apparently filed a separate petition for attorney fees and costs associated with the legal services of Victoria Velarde. Unfortunately, the petition relating to Ms. Velarde's services is not in the record.

On May 18, 2009, the superior court issued probate notes regarding respondents' petitions. The notes relating to Mr. Condon's attorney fees and costs stated the following: MATTERS TO CLEAR [] A. Should [respondents] Nora [Hamill] and Kathy [Peters] pay fees as individuals and not out of conservatorship/trust estate? Appears that petitioner was representing as individuals and Ms. Labow was [appointed] conservator after litigation of the competing petitions. [] B. Has petitioner [Condon] been paid any fees in this matter to date? [] C. Petitioner represented, according to filed pleadings captions, Stephen Peters and Michael Peters, Objectors and Nora Hamill and Kathy Peters, Competing petitioners for conservatorship of the Person. It appears that petitioner represented these persons as individuals and should bill fees to them. [] D. Did petitioner enter into a fee agreement with any of the clients named above i.e. Stephen, Michael, Nora or Kathy? Provide copies of fee agreements and allege if the agreements were court approved. [] E. Provide authority for payment of fees requested.

The notes relating to Ms. Velarde's attorney fees and costs stated: MATTERS TO CLEAR [] G. Were all attorney services rendered for the benefit of the conservatorship and not for the benefit of petitioners [respondents] as individuals?

On May 18, 2009, the superior court held a hearing on the petitions. Respondents appeared through counsel, Ms. Velarde; appellants did not appear. The court did not address the probate attorneys' notes at the hearing. Instead, the court simply granted both petitions for attorney fees and costs without explanation.<sup>[3]</sup> This appeal followed.

## CONTENTIONS

Appellants contend that the orders granting respondents' attorney fees and costs were procedurally defective because they were made before all of the matters outlined by the probate attorneys' notes were cleared, as required by the local rules. In addition, appellants assert numerous substantive arguments, including the following:

1. Respondents should not be compensated for Mr. Condon's services because Mr. Condon represented respondents as individuals in two unrelated civil actions.
2. Mr. Condon was already paid for his services and should not be paid twice.
3. Respondents failed to provide the superior court with copies of their fee agreements with Mr. Condon and Ms. Velarde. Because there allegedly were no written fee agreements, appellants contend that respondents' claims for attorney fees are barred by the two-year statute of limitations set forth in Code of Civil Procedure section 339.
4. Ms. Velarde failed to show the superior court that her services benefited the conservatorship and not merely the respondents as individuals.

Respondents dispute each of appellants' arguments.

## DISCUSSION

### 1. *Standard of Review*

Where, as here, a statute provides for an award of attorney fees, we review the trial court's award of attorney fees for abuse of discretion. (*Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 234.)

A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an

ingredient of the constitutional doctrine of [reversible error](#). [Citation] [Citations.] (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.)

The party seeking to challenge an order on appeal has the burden to provide an adequate record to assess error. <sup>[4]</sup> [Citation.] Where the party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him. [Citations.] (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.) Moreover, where an appellant fails to support his or her contentions with reasoned argument, citations to legal authority, and citations to the record, the appellant forfeits his or her claim of error on appeal. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1303.)

### 2. *The Superior Court Was Not Required to Deny Respondents Petitions Merely Because the Probate Notes Were Not Cleared by the Parties*

The Superior Court of Los Angeles County, Local Rules, rule 10.3 provides:

(a) Probate Notes Available on the Web. Probate notes are available in advance of the hearing at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org).

(b) Clearing Probate Notes. *Counsel or parties* must file additional documents as necessary to justify approval of the petition as stated in the Matters to Clear section of the Probate Notes. Items noted under the Matters to Clear must be cleared *by the party* no later than 3:30 p.m. of the second court day preceding the hearing date.

[ ] . . . [ ]

(d) Failure to Clear Probate Notes. If Probate Notes are not cleared, the Court will continue the hearing, place the matter off calendar, deny the matter without prejudice, *or take other action it deems necessary*. (Italics added.)

The Superior Court of Los Angeles County, Local Rules, rule 10.1 provides: The court for good cause may waive the application of the rules in this chapter in an individual case.

Together, these two rules place an obligation *on the parties* to clear probate notes and grant the trial court *discretion* to take remedial action, or no action at all, if the parties do not do so. The rules do not, as appellants contend, *require* the superior court to deny a petition if the parties do not clear the probate notes.

We cannot ascertain from the record why the probate notes were apparently not cleared in this case, or whether the trial court determined that clearing the notes was not necessary. However, as stated, we must presume that the trial courts orders were correct unless the appellants show otherwise. This the appellants did not do. As we shall explain, appellants failed to provide legal authority, reasoned argument, and citations to the record showing that the superior courts orders granting respondents petitions for attorney fees and costs were an abuse of discretion.

### 3. *Appellants Failed to Show That the Trial Court Abused Its Discretion in Granting the Petition Relating to Condons Attorney Fees and Costs*

In *Estate of Moore* (1968) 258 Cal.App.2d 458, 462, the issue was whether in the absence of statutory authorization, one who in good faith initiates caretaker proceedings in which a guardian or conservator other than the initiator is appointed may be awarded his costs and counsel fees. The court held that a petitioner who in good faith initiated caretaker proceedings but was not himself appointed the caretaker could indeed recover his attorney fees and costs. (*Ibid.*)

*Estate of Moore* was decided in the absence of any statutes regarding the matter. In 1995, the Legislature enacted Probate Code section 2640.1, which provides:

(a) If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned for the appointment of a

conservator but was not appointed and that persons attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs, provided that the court determines that the petition was filed in the best interests of the conservatee.

[] . . . []

(c) Upon the hearing, the court shall make an order to allow both of the following:

(1) Any compensation or costs requested in the petition the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

(2) Any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.<sup>[5]</sup>

In this case, appellants challenge the trial courts award to respondents of Mr. Condons attorney fees and costs associated with respondents initial unsuccessful effort to be appointed as co-conservators. Appellants, however, make no arguments regarding whether respondents were entitled to attorney fees and costs pursuant to *Estate of Moore*, Probate Code section 2640.1, or some other statute or case.

Instead, appellants contend that respondents should not be compensated for Mr. Condons attorney fees and costs because Mr. Condon never represented Lee Peters at any time and because he only represented respondents as individuals. However, appellants do not cite legal authorities, provide reasoned argument, or provide citations to the record to support their position. Appellants thus forfeited their claim of error.

Appellants also contend that respondents already paid Mr. Condon and that Mr. Condon should not be paid twice. However, to the extent Mr. Condon was paid for attorney fees and costs by both the court and respondents, the only parties harmed were respondents. Appellants have no standing regarding that issue.<sup>[6]</sup>

#### 4. *Appellants Failed to Show That the Trial Court Abused Its Discretion in Granting the Petition Relating to Velardes Attorney Fees and Costs*

Respondents contend that they were entitled to recover Ms. Velardes attorney fees and costs pursuant to Probate Code section 2640.<sup>[7]</sup> Appellants do not discuss Probate Code section 2640 in their briefs or cite any legal authorities to support their arguments relating to Ms. Velardes attorney fees and costs.

Appellants contend that Ms. Velardes attorney fees and costs were related to different lawsuits. They also contend that Ms. Velarde provided no fee agreement between herself and her clients or an itemized accounting as required by the Clearing of Matters. However, appellants did not include in the record a copy of respondents petition for reimbursement of Ms. Velardes attorney fees and costs. Because appellants failed to provide an adequate record to support their arguments, they have forfeited them.

Appellants also argue Ms. Velarde shows that she had already been paid \$33,385.00 for work done under the conservatorship. However, appellants do not cite anything in the record to support this argument. Appellants thus forfeited this argument too.

#### 5. *Respondents Petitions Were Not Barred by Code of Civil Procedure Section 339*

Appellants contend that respondents petitions were barred by the two-year statute of limitations set forth in Code of Civil Procedure section 339. They are mistaken. The periods of limitation set forth in Code of Civil Procedure section 335 et seq., relate to the commencing [of] actions other than for the recovery of real property[.] (Code Civ. Proc., 335.) The petitions at issue did not commence an action. Code of Civil Procedure section 339 therefore has no application to the petitions.

# DISPOSITION

The orders of the superior court dated May 18, 2008, are affirmed. Respondents are awarded [costs on appeal](#).

## NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.

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<sup>[1]</sup> In a letter dated May 13, 2010, this court asked both appellants and respondents to submit supplemental briefs regarding the following four issues: 1. Were respondents named as conservators of Lee Peters and, if so, during what dates were they conservators? [] 2. Did Jeffrey L. Condon or Condon & Condon, a professional corporation, or Victoria Velarde represent Lee Peters or the conservator at any time during the proceedings in the trial court in Case Number BP085494? If so, when? [] 3. What is the legal authority for reimbursing respondents for legal services provided by Jeffrey L. Condon, Condon & Condon, a professional corporation, and/or Victoria Velarde? In discussing this issue, the parties should identify specific provisions of the Probate Code, case law, and other authority to support their position. [] 4. Did the trial court award Victoria Velarde \$39,751.25 in attorney fees and \$400 in costs? If so, precisely where in the appellate court record does it indicate such an award was made? The parties should support their position by reference to specific page numbers in the clerks transcript or elsewhere in the record, as well as the specific language on which they rely. Respondents provided a supplemental brief in response to this courts letter; appellants did not. Respondents did not cite anything in the record to support their contentions that (1) they were appointed co-conservators and (2) that Ms. Velarde represented them in that capacity.

<sup>[2]</sup> It is unclear whether this petition was filed by respondents or by Mr. Condon and his firm.

<sup>[3]</sup> The orders granting the petitions did not state the amount of attorney fees awarded. Appellants contend that the court awarded \$67,616 in attorney fees for Mr. Condons services. Respondents do not dispute that claim. Appellants contend that the court awarded \$37,826.25 in attorney fees for Ms. Velardes services. Respondents contend that the amount of the award was \$39,751.25.

<sup>[4]</sup> When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two. (*Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, 364.)

<sup>[5]</sup> Probate Code section 2640.1 was amended in 2006 (Assem. Bill No. 1363 (1995-1996 Reg. Sess.) 28) and has a retroactive effect (Prob. Code, 2640.1, subd. (d).) The statute as quoted above was effective at the time Mr. Condons attorney fees and costs were incurred and at the time respondents filed their petition.

[6] In support of their argument, appellants cite the First Account Current and Report of Co-Trustee and Petition for Its Settlement, a document which was filed in *In re the Lee Peters Trust* (Super. Ct. Los Angeles County, 2005, No. BP 092799) (the Trust Action). This document indicates that respondents *requested* to be reimbursed for Mr. Condons attorney fees and costs in the Trust Action. However, as appellants concede, the court *denied* respondents request. Accordingly, appellants have not shown that respondents have been reimbursed twice for Mr. Condons attorney fees and costs.

[7] Probate Code section 2640, subdivision (a) provides: At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following: [] (1) The guardian or conservator of the estate for services rendered to that time. [] (2) The guardian or conservator of the person for services rendered to that time. [] (3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.



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