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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of PIERRE TAMAS, Deceased.

KAREN BROWN,

Petitioner and Appellant,

v.

ANA TAMAS,

Objector and Respondent.

G057205

(Super. Ct. No. 30-2017-00905226)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,  
Kim R. Hubbard, Judge. Reversed and remanded with directions.

Morris Law Firm and Byron K. Husted for Petitioner and Appellant.

Tresp Law, Elizabeth A. Tresp and Carla Keehn for Objector and  
Respondent.

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## INTRODUCTION

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (Hague Service Convention) sets the rules for service of judicial documents in foreign countries. When the Probate Code requires *delivery of notice*, as opposed to *service of notice*, on an individual in a foreign country, does the Hague Service Convention apply? We conclude it does not. Therefore, after the delivery of notice to an heir of the decedent, the trial court properly approved a petition to administer the decedent's estate and admitted his will to probate. The court's later order vacating those orders was in error. We reverse the later order; the result will be that the will is readmitted to probate and the administration of the estate shall proceed.

Because the trial court analyzed the objection by the decedent's heir at law under the rules of the Hague Service Convention, it did not consider the issue of the timeliness of the objection. We remand the matter to permit the trial court to make a factual finding on this issue in the first instance, and to decide the merits of the objection, if necessary.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

Karen Brown and Pierre Tamas lived together as romantic partners for 19 years; they were never registered domestic partners. Ana Tamas, a resident of Argentina, is Pierre Tamas's sister, and is his only living relative.

Pierre Tamas died on January 4, 2017. On February 24, Brown filed a petition to administer the estate of and for probate of the will of Pierre Tamas, pursuant to Probate Code section 8000 et seq. The petition attached an unwitnessed, unnotarized, typewritten will, signed by Pierre Tamas, leaving his home to Brown (the Will). According to the proof of service, a notice of the petition was mailed to Ana Tamas in Argentina, pursuant to Probate Code sections 8110 and 1215.

The original hearing date was continued to allow Brown to clear the probate attorney's notes. According to the proof of service, a second notice of the petition with the new hearing date was mailed to Ana Tamas. Brown's petition was approved and the Will was admitted to probate on April 27, 2017.

Later in the day of April 27, 2017, Brown's attorney received a phone call from a woman identifying herself as a friend of Ana Tamas and asking about the meaning of the papers Ana Tamas had received. Brown's attorney advised the woman that the petition to admit the Will to probate had been approved, the Will had been admitted to probate, and Ana Tamas should seek counsel in Orange County if she had further questions. The formal order for probate was filed July 3, 2017.

On October 24, 2018, 18 months after the court approved the petition for probate, Ana Tamas filed an objection alleging she had never received proper notice of the petition for probate because Brown's notice did not comply with the Hague Service Convention. On December 6, the trial court vacated its order appointing Brown as administrator and admitting the Will to probate. Brown timely filed a notice of appeal.

## DISCUSSION

We review this matter de novo, as it involves the analysis and interpretation of statutes. (*In re Dean W.* (2017) 16 Cal.App.5th 970, 974.)

### I.

#### *THE HAGUE SERVICE CONVENTION APPLIES TO SERVICE OF PROCESS WITHIN SIGNATORY COUNTRIES.*

The purpose of the Hague Service Convention is "to simplify, standardize, and generally improve the process of serving documents abroad. [Citations.] To that end, the Hague Service Convention specifies certain approved methods of service and 'pre-empts inconsistent methods of service' wherever it applies." (*Water Splash, Inc. v. Menon* (2017) \_\_\_ U.S. \_\_\_ [137 S.Ct. 1504, 1507].) The Hague Service Convention

applies “in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.” (Hague Service Convention, art. 1.)<sup>1</sup>

Article 10(a) of the Hague Service Convention is at issue in this case: “Provided the State of destination does not object, the present Convention shall not interfere with – a) the freedom to send judicial documents, by postal channels, directly to persons abroad.” In *Water Splash, Inc. v. Menon*, *supra*, \_\_\_ U.S. at page \_\_\_ [137 S.Ct. at page 1513], the United States Supreme Court held: “Article 10(a) encompasses service by mail. To be clear, this does not mean that the Convention affirmatively *authorizes* service by mail. Article 10(a) simply provides that, as long as the receiving state does not object, the Convention does not ‘interfere with . . . the freedom’ to serve documents through postal channels. In other words, in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law.”

Argentina objected to Article 10(a) of the Hague Service Convention. Therefore, service by mail is not a proper means of serving someone in Argentina under the Hague Service Convention.

Article 10(a) of the Hague Service Convention has been held to apply only to service of process. “Both the text and context of the [Hague Service] Convention demonstrate that the Convention is meant to apply *only* to service of process, and that fact

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<sup>1</sup> Probate matters are civil matters, to which the Hague Service Convention could apply. (*Schlyen v. Schlyen* (1954) 43 Cal.2d 361, 371 [“Probate matters are civil in their nature”]; *Estate of Mullins* (1961) 190 Cal.App.2d 413, 417 [probate court is not “separate and distinct from the superior court sitting in the exercise of its probate jurisdiction”]; see *In re Alyssa F.* (2003) 112 Cal.App.4th 846, 852 [Hague Service Convention applies to juvenile dependency proceedings because they “are civil in nature”].)

undermines respondents’ claim that article 10(a) is meant to cover the mailing of *nonservice of process* judicial documents only. For example, article 1 of the convention states: ‘The present Convention shall apply, in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document *for service abroad*.’ (Italics added.) Likewise, the Convention preamble advises that the Convention signatories desire ‘to create appropriate means to ensure that judicial or extrajudicial documents *to be served abroad* shall be brought to the notice of the addressee in sufficient time,’ and desire ‘to improve the organization of mutual judicial assistance for *that purpose* by simplifying and expediting *the procedure*, . . . .’ (Italics added.)” (*Denlinger v. Chinadotcom Corp.* (2003) 110 Cal.App.4th 1396, 1401.)

## II.

### *NOTICE OF A HEARING UNDER PROBATE CODE SECTIONS 8110 AND 1215 DOES NOT REQUIRE SERVICE OF PROCESS.*

## A.

### *Relevant Statutes*

Probate Code section 8110 provides: “At least 15 days before the hearing of a petition for administration of a decedent’s estate, the petitioner shall deliver notice of the hearing pursuant to [Probate Code] Section 1215 on all of the following persons: [¶] (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner. [¶] (b) Each devisee, executor, and alternative executor named in any will being offered for probate, regardless of whether the devise or appointment is purportedly revoked in a subsequent instrument.”

Probate Code section 1215 provides, in relevant part: “Unless otherwise expressly provided, a notice or other paper that is required or permitted to be delivered to a person shall be delivered pursuant to one of the following methods: [¶] (a) Delivery by mail. [¶] (1) A notice or other paper shall be delivered by mail as follows: [¶] (A) By first-class mail if the person’s address is within the United States. First-class mail

includes certified, registered, and express mail. [¶] (B) By international mail if the person's address is not within the United States. International mail includes first-class mail international, priority mail international, priority mail express international, and global express guaranteed. [¶] (2) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed. [¶] (3) Subject to Section 1212, the notice or other paper shall be addressed to the person at the person's place of business or place of residence. [¶] (4) Delivery by mail is complete when the notice or other paper is deposited in the mail. The period of notice is not extended.”<sup>2</sup>

Unless service of process is required, any notice requirement under the Probate Code is fulfilled by delivery under section 1215: “If a notice or other paper is required to be served or otherwise given and no other manner of giving the notice or other paper is specified by statute, the notice or other paper shall be delivered pursuant to Section 1215.” (Prob. Code, § 1217.)

In contrast to Probate Code section 1215's rules regarding delivery of notice, Code of Civil Procedure section 413.10 provides the general rules for service of summons of process: “Except as otherwise provided by statute, a summons shall be served on a person: [¶] (a) Within this state, as provided in this chapter. [¶] (b) Outside this state but within the United States, as provided in this chapter or as prescribed by the law of the place where the person is served. [¶] (c) Outside the United States, as provided in this chapter or as directed by the court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory. These rules are subject

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<sup>2</sup> Probate Code section 1215, subdivisions (b) and (c) address personal delivery and delivery by electronic means. Because the delivery in this case was by mail, we need not address those portions of the statute.

to the provisions of the Convention on the ‘Service Abroad of Judicial and Extrajudicial Documents’ in Civil or Commercial Matters (Hague Service Convention).”

B.

*Analysis*

A notice of hearing does not require service of process. The purpose of effecting service of process in a civil case is to obtain personal jurisdiction over the defendant. In order to probate a will or to appoint a personal representative of an estate, a probate court does not need to have personal jurisdiction over any person. The court obtains subject matter jurisdiction over the estate by: (1) making findings regarding the decedent’s date and place of death (Prob. Code, § 8005, subd. (b)(1)(A)); (2) making findings that the decedent was domiciled or left property in California at the time of death (*id.*, subd. (b)(1)(B)); and (3) confirming that notice of the petition to administer the probate estate has been published (*id.*, subd. (b)(1)(C)).

Due process requires that all known or reasonably ascertainable heirs and creditors receive actual notice of the proceedings. (Prob. Code, §§ 8110, 9050.) Constructive notice by means of publication satisfies due process for heirs and creditors whose identities or whereabouts are not reasonably ascertainable. Probate . . . proceedings are in rem, that is, seek to affect the interests of all persons in certain property. [Citations.] In such proceedings, constructive notice authorized by statute satisfies the requirements of due process. [Citation.] [¶] Thus, with regard to probate proceedings, ‘[b]y giving the notice prescribed by the statute, the entire world is called before the court, and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate . . . .’ [Citation.] In probate proceedings, ‘. . . one who lives in another state, or in a foreign country, and never in fact received any notice, is still bound if the statutory notice was given.’” (*Parage v. Couedel* (1997) 60 Cal.App.4th 1037, 1042.)

In *Tulsa Professional Collection Services v. Pope* (1988) 485 U.S. 478, the United States Supreme Court approved the process of mailing notice to known and readily ascertainable heirs and creditors along with notice by publication:

“In assessing the propriety of actual notice in this context consideration should be given to the practicalities of the situation and the effect that requiring actual notice may have on important state interests. [Citations.] As the Court noted in *Mullane* [v. *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306], ‘[c]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper.’ [Citation.] Creditors, who have a strong interest in maintaining the integrity of their relationship with their debtors, are particularly unlikely to benefit from publication notice. As a class, creditors may not be aware of a debtor’s death or of the institution of probate proceedings. Moreover, the executor or executrix will often be, as is the case here, a party with a beneficial interest in the estate. This could diminish an executor’s or executrix’s inclination to call attention to the potential expiration of a creditor’s claim. There is thus a substantial practical need for actual notice in this setting.

“At the same time, the State undeniably has a legitimate interest in the expeditious resolution of probate proceedings. Death transforms the decedent’s legal relationships and a State could reasonably conclude that swift settlement of estates is so important that it calls for very short time deadlines for filing claims. As noted, the almost uniform practice is to establish such short deadlines, and to provide only publication notice. [Citations.] Providing actual notice to known or reasonably ascertainable creditors, however, is not inconsistent with the goals reflected in nonclaim statutes. *Actual notice need not be inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice.* [Citations.] In addition, *Mullane* [v. *Central Bank & Trust Co.*, *supra*, 339 U.S. 306] disavowed any intent to require ‘impracticable and extended searches . . . in the name of due process.’ [Citation.] As the Court indicated in



*Mennonite [Board of Missions v. Adams (1983) 462 U.S. 791, 798, fn. 4]*, all that the executor or executrix need do is make ‘reasonably diligent efforts,’ [citation], to uncover the identities of creditors. For creditors who are not ‘reasonably ascertainable,’ publication notice can suffice. Nor is everyone who may conceivably have a claim properly considered a creditor entitled to actual notice. Here, as in *Mullane [v. Central Bank & Trust Co., supra, 339 U.S. 306]*, it is reasonable to dispense with actual notice to those with mere ‘conjectural’ claims.” (*Tulsa Professional Collection Services v. Pope, supra, 485 U.S. at pp. 489-490*, some italics added.)

The delivery of notice by mail to potential estate beneficiaries, rather than service of process, is the method of notice accepted by the Uniform Probate Code, and which is used by the states adopting the Uniform Probate Code. (8 pt. 1 West’s U. Laws Ann. (2013) U. Prob. Code (1969) § 1–401, p. 82; 8 pt. 2 West’s U. Laws Ann. (2013) U. Prob. Code (1969) § 3–403, pp. 86-87.)

Differentiation between delivery of notice and service of process is common in California’s Probate Code. For instance, Probate Code section 8250, subdivision (a) requires that after a will contest is filed, a summons must be issued and served under Code of Civil Procedure sections 412.10 and 413.10 on the same persons on whom notice of hearing is required to be delivered under Probate Code section 8110.

A series of statutes provides for service on certain parties, and notice to others. Notice of a hearing on a petition under Probate Code section 17200 concerning the internal affairs of a trust or to determine the existence of a trust must be *delivered* pursuant to Probate Code section 1215 to all trustees, beneficiaries, and the Attorney General (in appropriate cases). (*Id.*, § 17203, subd. (a).) That same notice must be *served* pursuant to Code of Civil Procedure section 413.10 et seq. on any other person whose interests would be affected by the petition. (Prob. Code, § 17203, subd. (b).) In *In re Carthage Trust* (C.D.Cal. Feb. 14, 2013, No. 2:12-cv-10861-ODW) 2013 U.S. Dist. Lexis 20393, the district court held that a Probate Code section 17200 petitioner was

only required to *mail* the notice of hearing to the “sub-trustee” of the trust, which was an international corporation (*In re Carthage Trust, supra*, 2013 U.S. Dist. Lexis 20393 at pp. \*11-\*12), but was required to *serve* the notice of hearing on the principal of a company that owned another company that owned the sub-trustee (*id.* at pp. \*14-\*16).

Similarly, Probate Code section 19323, which addresses the allocation of debt to a deceased settlor’s revocable trust, requires that notice of a hearing on a petition to allocate debt be *served* on the surviving spouse under Code of Civil Procedure section 413.10, and at the same time *delivered* under Probate Code section 1215 to all trustees, beneficiaries, the settlor’s personal representative (if any), and the Attorney General (if the trust is a charitable trust under the Attorney General’s jurisdiction).

Probate Code section 1511 requires that notice of a hearing on a petition for appointment of a guardian be *served* under Code of Civil Procedure section 415.10 or 415.30 on the proposed ward, his or her parents or persons with legal custody, and any person nominated as a guardian. Notice of the hearing must be *delivered* pursuant to Probate Code section 1215 to the proposed ward’s spouse, relatives named in the petition, the person having care of the proposed ward, and, if applicable, the Director of State Hospitals, the Director of Developmental Services, the Director of Social Services, or the Veterans Administration. (Prob. Code, § 1511, subds. (b)-(e).)

C.

### *Conclusion*

Based on the foregoing, we conclude Probate Code section 8110’s requirement of delivery of a notice of hearing on a petition for administration of an estate does not require service of process subject to the Hague Service Convention. Delivery of the notice by mail to Ana Tamas was proper and sufficient. We therefore reverse the trial court’s order vacating the order to appoint Brown as administrator and admitting the Will to probate.

### III.

#### *THE ISSUE OF THE TIMELINESS OF THE OBJECTION AND, IF NECESSARY, ITS MERITS, ARE REMANDED TO THE TRIAL COURT.*

In the response to Ana Tamas's objection to the probate of the Will, Brown raised the issue of the timeliness of the objection. Probate Code section 8270, subdivision (a) provides: "Within 120 days after a will is admitted to probate, any interested person, other than a party to a will contest and other than a person who had actual notice of a will contest in time to have joined in the contest, may petition the court to revoke the probate of the will." Ana Tamas's objection was filed in October 2018, almost 18 months after the petition to probate the will had been approved.

"The probate of a will is conclusive if not contested within 120 days after the will is admitted to probate. [Citation.] Even in the absence of a timely contest, however, a court may exercise its equitable jurisdiction to set aside orders and decrees of probate proceedings in cases of fraud or mistake. [Citations.] It is well settled, however, that 'only upon proof of *extrinsic* and *collateral* fraud can plaintiff seek and secure equitable relief from the judgment. A showing of fraud practiced in the trial of the original action will not suffice.' [Citation.] The courts have required a showing of extrinsic fraud in order to accommodate both the policy in favor of resolving issues in a final judgment and the policy in favor of a fair adversary proceeding in which each party is provided an opportunity to fully present its case." (*Estate of Sanders* (1985) 40 Cal.3d 607, 613-614.)

If the matter had been governed by the Hague Service Convention, the objection could have been brought at any time. "Failure to properly serve a party who resides outside the country under the Hague Service Convention renders all subsequent proceedings void as to that person." (*In re Alyssa F.*, *supra*, 112 Cal.App.4th at p. 852.) As we concluded *ante*, however, the Hague Service Convention did not apply here.

Because the trial court applied the Hague Service Convention, it did not address the timeliness of Ana Tamas's objection. We remand the matter to the trial court to make the necessary findings on this issue.

We have reversed the order vacating the court's order for probate, filed on July 3, 2017. If the trial court finds that Ana Tamas's objection was not timely filed, then the July 3, 2017 order for probate shall be reinstated in full.

If the trial court finds that Ana Tamas's objection was timely filed, based on a finding of extrinsic, collateral fraud, then the court must address the issue of the propriety of the notice given by Brown to Ana Tamas. Ana Tamas raised two issues regarding notice: (1) that she did not receive actual notice of the hearing, and (2) that delivery under Probate Code section 1215 was improper. As to the first issue, under Probate Code section 1215, proof of actual notice is not required. "Delivery by mail is complete when the notice or other paper is deposited in the mail. The period of notice is not extended." (*Id.*, subd. (a)(4).)

As to the second issue, notice under Probate Code section 1215, which is delivered by mail, requires the following in the case of a person living outside the United States: "(1) A notice or other paper shall be delivered by mail as follows: [¶] . . . [¶] (B) By international mail if the person's address is not within the United States. International mail includes first-class mail international, priority mail international, priority mail express international, and global express guaranteed. [¶] (2) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed." (*Id.*, subd. (a)(1)(B), (2).)

With regard to the means of delivery, Brown's response to Ana Tamas's objection reads as follows: "In this case, [Brown] delivered the Notice of Petition to Administer the Estate of the Decedent on March 14, 2017, and April 11, 2017, respectively, by depositing the notice for collection in the United States mail, in a sealed

envelope, with international first-class postage paid. Therefore, notice was given properly pursuant to statute.” Ana Tamas argues that this statement was not verified, and was not made in a declaration or other statement under oath. The trial court should address these arguments on remand, if it first finds the objection was not time-barred.

#### DISPOSITION

The December 6, 2018 order vacating the July 3, 2017 order is reversed and the matter is remanded to the trial court for further proceedings. The Will shall be readmitted to probate and the administration of the estate shall proceed. The trial court shall consider the timeliness of Ana Tamas’s objection. If the trial court determines the objection was not timely, the order of July 3, 2017 shall be reinstated in full. If the trial court determines that the objection was timely despite the 120-day jurisdictional limit, the court shall consider the issue of the propriety of the delivery of the notice under Probate Code section 1215. In the interests of justice, neither party shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.