Pool-O'Connor v. Guadarrama

2023 | Cited 0 times | California Court of Appeal | April 25, 2023

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CERTIFIED FOR PARTIAL PUBLICATION *

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

KATHY POOL- et al.,

Plaintiffs and Respondents,

v.

CHRISTOPHER GUADARRAMA, as Trustee, etc.,

Defendant and Appellant. F083954

(Super. Ct. No. BPB-19-002534)

OPINION

APPEAL from an order of the Superior Court of Kern County. Andrew B. Kendall, Commissioner. Law Offices of Robert H. Brumfield and Robert H. Brumfield III for Defendant and Appellant. Van Sciver Law and Kurt Van Sciver for Plaintiffs and Respondents. -ooOoo-

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of sections I, II and V. INTRODUCTION This case involves disputes over the disposition of assets of Albert R. Pool (Albert) 1 following his demise. The assets at issue include monies held in a joint checking account and real and personal property assets held in trust pursuant to the Albert and Restatement of the Albert R. Pool Family Revocable Trust (unnecessary capitalization omitted)

-in-fact under a durable power of attorney (POA), executor under a pour-over will, and successor Trustee under the Amended/Restated Trust.

December 15, 2021, in connection with an Amended Petition to Surcharge Trustee for Breach of Trust; Petition to Determine Trust Ownership of Assets and for Damages Pursuant to Probate Code Section 859 (unnecessary capitalization omitted) brought by respondent Kathy Pool- (Kathy) and joined in by respondents Rachelle Lapham (Rachelle) and Sharon Whiteside (Sharon), each of whom were beneficiaries under the Amended/Restated Trust. We conclude the subject order should be modified to correct a transpositional error, and remand for that purpose. In all other respects, the order is affirmed.

1 For purposes of clarity and convenience, we refer to the parties and various family members by their first names. No disrespect is intended. PROCEDURAL AND FACTUAL BACKGROUND I. Factual Background A. Select Family History Albert was a businessman and property owner in Lebec, California. Albert and his wife, Mabeleen, owned various residences, vacant lots, and a mini-mart in Lebec. Prior to her passing, Mabeleen was the primary operator of the mini-mart, and did the banking for her and her husband. She predeceased Albert in 2002. Albert and Mabeleen had four biological children, Kathy, Sharon, Diana Pool, and an older brother, Michael Pool. Michael died before any of the events in question. In addition, Albert adopted

After Mabeleen died, Sharon, Kathy, and Maxine operated the mini-mart. Maxine took over managing finances for the mini- to decline, a decision was made to close the mini-mart. Starting in 2012, Christopher began helping Albert and Maxine manage the family finances and pay the family bills. Christopher would make out the checks and either Albert or Maxine would sign them. Maxine would also give Christopher signed blank checks for Christopher to fill out with payee and payment information. Albert had only one bank account and it was jointly held by him and Maxine up until 2013 at which time

into the joint account. Albert did little, if any banking himself. He could not read well and secreted cash in various locations. 2

2 For example, in the First Account and Report of Christopher Guadarrama, Trustee for Albert R. Pool Family Trust (bold type and unnecessary capitalization omitted), Christopher disclosed a total of $89,894.50 in c home, other real property he owned, automobiles and a recreational vehicle. B. Albert and Mabeleen created the Original Trust Instrument on December 6, 1992. (Albert and Mabeleen a

with the Amended/Restated Trust.) As mentioned, Mabeleen predeceased Albert in 2002. The Original Trust

shall become irrevocable and not subject to amendment or modifica On February 28, 2013, Albert executed a series of estate planning documents. Specifically, and without limitation, Albert executed (1) the Amended/Restated Trust naming his nephew, Christopher, first successor Trustee of the Amended/Restated Trust, Trustee in the event Christopher could not, or would not, serve; (2) a pour-over will in which Albert gifted his entire estate to the Trustee of his Trust and nominated

Christopher to serve as executor of his will; and (3) the POA appointing Christopher as his attorney-in-fact.

the Trustee

As to Trust assets not subject to a gift provision, the Amended/Restated Trust provided that Sharon, Kathy, Diana, Rachelle and Maxine (or their respective issue if they did not survive Albert) would each receive a 16.6% share of the total Trust property for a total cumulative percentage share of 83%. Barring certain circumstances and subject to other contingencies, the remaining 17% share was to be equally divided among a handful of individuals including Christopher. C. The Joint Account On September 8, 2017, Albert added Christopher as an authorized signer to the joint account. Albert died a little over five months later on February 28, 2018. Christopher testified that, from the time the POA was signed up of his acts with respect to the joint account were taken in his capacity as attorney-in-fact.

diminishing as early as September or October of 2017, Christopher was unable to say.

he was forgetful, he would say off-the-wall stuff, and would suddenly go quiet mid-

conversation. One of his eyes was practically closed. Beginning in 2017, he began to struggle, began falling, had hurt his lip and hit his head, and needed regular blood transfusions due to leukemia. Christopher testified that during the period 2012 through 2015, the balance of the joint account was never much more than $7,800. After said period, several large deposits

Christopher being added as an authorized signer, Christopher deposited $59,516.24 into the account. The deposit consisted of proceeds from the sale of 2103 Lebec (the mini- mart property). After Christopher was added to the joint account, Christopher caused two additiona

into the account. Christopher was unable to testify as to the source of the funds for these two deposits. He had no recollection of making the deposits. When asked if Albert told Christopher testified he did not believe the money in the joint account had anything to do with the Trust. However, when Christopher loaned $25,000 from the joint account to his cousin, Albert Ratcliffe, in March 2018, he prepared an installment note for the loan and drafted the note so that it was made payable to the Trust. For several months thereafter, Christopher, in his capacity as Trustee, collected money on the note and deposited the money into a new Trust account he had set up. Christopher was asked,

he believed he was loaning Mr. Ratcliffe his own money. Christopher later explained at trial that he had previously loaned Mr. Ratcliffe money and had trouble getting it back. He thought Mr. Ratcliffe would be more likely to pay it back if he thought the Trust required repayment. 1. On or about April 28, 2018, Christopher wrote himself a check from the joint account in the amount of $200,000. The

following month, on or about May 24, 2018, Christopher wrote himself another check from the joint account in the amount of $50,000, leaving an ending balance of $6,712.95 in the account. Christopher was asked what Albert Pool told him about the joint account at the time he was added to the account as an autho we left well, prior to going there, nothing other than we were going there to add me to

this signature card, did [Albert] d

discussions after that time, after t further comments about Christopher receiving the money in the joint account upon

Christopher was questioned further about his statement that Albert told him the joint account would be his to do with as he wanted once Albert passed away. Christopher was asked the following questions and gave the following answers:

n that you would receive the funds on behalf of the

2. Christopher also made a number of withdrawals from the joint account

joint account via ATMs in California and in Nevada. He also transferred money to his girlfriend via Western Union on numerous occasions. The probate court found that

federal gift tax exclusion to him or her, but only in the proportions authorized in D. The Trust specified a number of special gifts of real and personal property to be

Maxine passed away or chose to vacate the Subject Property, it was to be sold by the Trustee and the proceeds added to the Trust residue. Because Maxine predeceased Albert, the gift lapsed under the Trust.

requesting an inventory of assets held in the Trust estate and related information. On

including the following paragraph:

Trustee has also indicated to me that there has been some interest on the part of some of the beneficiaries of purchasing one or more of the houses from the trust at fair market value. This includes the house currently occupied by the Trustee [i.e., the Subject Property]. (He has occupied if for some time that he get the house, but felt unable to change the beneficiaries after his wife passed.) The Trust expressly permits this and the Trustee too can purchase for fair market value. Should the Trustee determine in his discretion that a sale would be appropriate, he will retain a neutral, licensed

sold to a beneficiary, a copy of the appraisal will be sent to your client along with the other beneficiaries, so they have a chance to make a written

Trust. The letter included proposed dispositions of several Trust real properties including the Subject Property. As to the latter, the following proposal was made:

Trustee has resided at [the Subject Property], for some time, with permission from the Settlors, who intended that it be his residence. It is my understanding that he has spoken with each of the beneficiaries, and they are willing to waive any interest in this property and consent that it be transferred to the Trustee.

Trustee obtained an appraisal from Michael Burger & Associates, a licensed appraiser. Mr. Burger is the Probate Referee for the County of Kern, and is responsible for valuing estates for the court. He has no personal connection to either myself or the [T]rustee, although obviously I have used him professionally on numerous occasions.

Trustee property to himself. Any objections need to be made in writing within

60 days of this letter, or the obje On January 29, 2019, Christopher, in his capacity as Trustee deeded the Subject Property to himself by way of a grant deed. The grant deed was recorded on January 31, y transfer tax is $ 0.00.

efforts taken in managing the real property of the Trust. As to the Subject Property, the letter read:

tter to the beneficiaries back in November, we gave notice of the intent to distributed [sic] this property to the Trustee. It was our understanding that all beneficiaries consented to this as being consistent opher has resided there for years, maintaining the property. We received no objections, so that

II. Procedural Background A. Pleadings and Interim Orders On June 27, 2019, Kathy filed a Petition to Remove Trustee and to Appoint Successor Trustee, and for Current Trustee to File Accounting (unnecessary

On November 5, 2019, Kathy filed a Petition to Suspend Trustee Appoint an Independent Person [Prob[ate] Code [section] 15642] (unnecessary capitalization omitted). That same day, Kathy also filed an Ex-Parte Application and Declaration to Suspend Trustee [Prob[ate] Code [section] 15642] (unnecessary capitalization omitted).

issued a minute order indicating it had granted the ex parte application to suspend Trustee. On February 21, 2020, the probate court issued a formal Trustee

Christo contacting Trust beneficiaries during his suspension. On July 13, 2020, Kathy filed an Amended Petition to Surcharge Trustee for Breach of Trust; Petition to Determine Ownership of Assets and for Damages Pursuant to

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On August 25, 2020, the parties filed a stipulation in which they stipulated, among other things, that (1) Christopher would resign as Trustee without prejudice to his right to (a) contest the claims made in the Removal Petition and Surcharge Petition; (b) seek reimbursement of costs incurred as Trustee and to claim Trustee fees; (2) that the court should appoint an identified individual as successor Trustee (a) under specified terms of payment for successor Trustee fees and expenses; and (b) with a provision for the appointment of counsel for the successor Trustee under specified terms; (3) that the court authorize the successor Trustee

Christopher will provide an accounting for the period preceding appointment of the successor Trustee. On Se stipulation. On October 14, 2020, Christopher filed objections to the Surcharge Petition. On October 28, 2020, Christopher filed his final accounting for the period he served as Trustee. On April On July 6, 2021, Rachelle and Sharon joined in the Surcharge Petition brought by Kathy. The probate court granted the joinder but indicated they were bound by the pleadings and could not raise new issues. B. The Probate Court Granted, In Part, and Denied, In Part, the Relief Sought By Way of the Surcharge Petition Trial on the Surcharge Petition commenced on July 7, 2021. On December 15, 2021, the probate court issued its Ruling and Order on Court Trial Regarding Amended Petition to Surcharge Trustee for Breach of Trust; Petition to Determine Trust Ownership of Assets and for Damages Pursuant to Probate Code Section 859; and Final Accounting by Former Trustee Christopher Guadarrama (u appeals. In the subject order, the probate court made the following findings and orders: (1) (2)

(3) (4) (5) Trustee ent of $4,017 in loan payments

insurance expenses that were paid by the [T]rust from the distributive shares of the reimbursement to the [T]rust of $3,279 in pet-

On February 9, 2022, Christopher timely filed a notice of appeal challenging the subject order. On appeal Christopher challenges only certain aspects of the subject order, namely the orders and related findings: (1) requiring Christopher to reconvey title to the Subject Property to the new Trustee; (2) requiring Christopher to deliver $205,643 to the Trustee (i.e., a portion of the $335,779 he was ordered to deliver to the Trustee) to reimburse for two withdrawals taken from the joint account; (3) requiring Christopher to deliver $28,059 to the Trustee (again, a portion of the aforementioned $335,779) for other withdrawals taken from the joint account; (4) requiring Christopher to deliver $20,281 to the Trustee (the remaining portion of the aforementioned $335,779) for withdrawals made from the joint account to pay his attorney; and (5) denying Christopher fees for his service as Trustee. `

DISCUSSION I. Standard of Review Where findings of fact are challenged on a civil appeal, the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below. (Jessup Farms v. Baldwin (1983) 33 Cal.3d 639, 660.)

Ibid.) All conflicts in the evidence are resolved in favor of the prevailing party. (Ibid. Schmidt v. Superior Court (2020) 44 Cal.App.5th 570, 581. (Schmidt).) Where the construction of a statute or written instrument is at issue, our review is extrinsic Pena v. Dey (2019) 39 Cal.App.5th 546, 551.) Schmidt, supra, re subject to extremely deferential review. (Ibid.) II. The Probate Court Did Not Err By Ordering Christopher to Reconvey the Subject Property to the Trustee The terms of the Amended/Restated Trust are not in dispute. With regard to the

occupy the [Subject Property] for her lifetime or until she no longer wishes to occupy the sic es, the

Trust further provides that the gift shall lapse if Maxine does not survive Albert. Maxine did not survive Albert. As discussed previously, instead of following the above provision, Christopher, through a November 7, 2018, letter written by his attorney, proposed that he transfer the property to himself. The letter advised its addressees that failure to object within 60 days of the letter would be deemed a waiver of any objection to the transfer. Having received no objections within that period of time, Christopher deeded the property to himself. At trial, Christopher offered three defenses in support of his decision to transfer the Subject Property to himself. He contended that the Trust beneficiaries verbally

advice in making the transfer. The probate court found against Christopher on each of the aforementioned opher only argues the court erred by failing to recognize that the transfer was lawful due to the

action. Consequently, he has forfeited any argument related to his remaining defenses in connection with his transfer of the Subject Property to himself. 3 (Golden Door Properties, LLC v. County of San Diego

With regard to the November 7, 2018, notice of proposed action, the probate court

intended to distribute the house to himself unless they objected did not cure the breach. A trustee may not buy or exchange trust property through use of the notice of proposed action procedure. (Prob. Code, § 4 Section 16501 provides, in trustee may not use a notice of proposed action in any of the following actions: [¶ the trust to the trustee or to the attorney for the trustee[; and ¶] (6) Exchange of property of the trust for property of the trustee or for property of the attorney for the trustee (§ 16501, subd. (d)(5), (6).)

Christopher acknowledges section 16501 bars a trustee from using the notice of

of trust property for not bar use of

3 beneficiaries verbally consented to the transfer, that Christopher admitted he did not

testified Christopher never discussed the matter with her. Nor does Christopher nsel defense is not applicable due to the fact Christopher told his counsel that all beneficiaries had consented to the transfer, which was not true. 4 All statutory references are to the Probate Code unless otherwise noted. the procedure where a trustee argument, Christopher notes that subdivision (a)(2) of the statute uses the

term 5 [L]egislature made a deliberate choice to permit trustees to use the notice of proposed

prope

section 16501, his argument is based solely on (1) his use o grant deed he executed as Trustee to convey the Subject Property to himself; and (2) the

self. Christopher contends the

constitutes a finding that the conveyance of the Subject Property was a distribution and not a sale or exchange of Trust property to himself.

asks that [Christopher] be surcharged for multiple alleged breaches of trust, including the distribution states that the beneficiaries consented to his distribution to the proposed

distribution

5 (a) The trustee who elects to provide notice pursuant to this chapter shall deliver notice pursuant to Section 1215 of the proposed action to each of the following: [¶ (2) A beneficiary who would receive a distribution of principal if the trust were terminated at the time the notice is given. 16501, subd. (a)(2).) never spoke to beneficiary Heath Poff about consenting to the distribution ussed the distribution with distribution of [the Subject Property] to himself

defense that] he relied on the advice of counsel in distributing

distribution beneficiaries informing them that [Christopher] intended to distribute the house to himself unless they objected did not cure the breach. A trustee may not buy or exchange

added). A court order is interpreted under the same rules for interpreting writings in general. [Citations.] The language of a writing governs if it is clear and explicit. But when it is susceptible to two interpretations, the court should give the construction that will make the [writing] lawful, operative, definite, reasonable and capable of being carried into effect and avoid an interpretation which will make the [writing] extraordinary, harsh, unjust, inequitable or which would result in absurdity. Subsequent actions by the rendering judge may be considered as bearing upon the

judgments intended meaning and effect. In re Marriage of Falcone & Fyke (2012) 203 Cal.App.4th 964, 989.) If an order is ambiguous, the reviewing court may examine the record for its scope and effect and may look at the circumstances of its making. In re Marriage of Samson (2011) 197 Cal.App.4th 23, 27.) It is clear from the subject order that the probate court did not find that Christopher was, as the language of the referenced st beneficiary who would receive a distribution of principal if the trust were terminated at the time the notice is given 16501, subd. (a)(2).) Nothing in the subject order suggests otherwise and to so interpret the subject order would result in absurdity. Unmistakably, the court found those terms are used in the statute. (Id., at subd. (d).) That finding is supported by the

the Trust. The court even cited subdivision (d)(5) and (d)(6) of section 16501 as authority for its determination that Christopher could not use the notice of proposed action procedure to cure the breach.

to describe how the litigants themselves described the conveyance. In those instances where the court used the term as an easy reference to the conveyance, it is clear that the court was not using the term to describe a distribution that complied with Trust provisions. The court was merely describing the process of conveying the asset from the Trust to Christopher, nothing more. Christopher does not proffer an alternative meaning

Dills v. Redwoods Associates, Ltd. (1994) 28 Cal.App.4th 888, 890, fn. 1.) The fact that Christopher used the term in the grant deed by which he conveyed the Subject Property to himself is irrelevant and of no moment. Christopher had no entitlement to the Subject Property under the terms of the Trust.

intended to be an update as to the status of the [T]rust, as well as notice of intent to sell a property to the [T]rustee for fair market value as provided in Paragraph 7.13 of the

he was entitled to t attorney on August 23, 2018, indicated the notice of proposed action would follow if

h the notice of proposed action sent to Trust beneficiaries and the the trustee 16501, subd. (d)(5).) 6

order. III. The Probate Court Did Not Err In Ordering Christopher to Deliver Approximately $205,643 Plus Interest to the Current Trustee

two large deposits into the joint account in the amounts of $99,720.46 and $104,922.07

any information concerning the deposits. He did not know the source of the funds and had no recollection of making the deposits. There were no discussions between Christopher and Albert concerning the funds. Notably, Christopher treated money in the joint account as if it were money

belonging to the Trust. He loaned money from the account to Mr. Ratcliffe and had Mr. Ratcliffe sign a promissory note in favor of the Trust. The probate court could have concluded this was an acknowledgment by Christopher that the subject funds in the joint account belonged to the Trust; and that, at the time he made the deposits, he did so with the belief he was properly allocating that money to the Trust. Substantial evidence supports such a finding. However, there are more compelling reasons to affirm the

6 Moreover, to the extent the conveyance of the Subject Property to Christopher was intended to be offset against his just entitlement under the Trust, if any, it would

trustee 16501, subd. (d)(6).) A notice of proposed action cannot be used to effectuate such an exchange. (Ibid.) attorney-in-fact. An attorney-in-fact is a fiduciary. (§ attorney-in-fact is subject to the attorney-in- dealing with property of the principal, an attorney-in-fact shall observe the standard of

(§ -in-fact has a duty to act solely in the interest of the e attorney-in-fact

4233, subd. (a).) An attorney may comply with the obligation to keep

principal or in the name of the attorney-in-fact as attorney-in- (§ -in-fact shall keep records of all transactions entered into by the attorney-in- 4236, subd. (a).) An attorney- in- s property absent an express grant of such authority in the power of attorney. (§ 4264, subds. (c) & (e).) Christopher did not adhere to his fiduciary duties in managing the subject funds. He failed to keep the deposits separate and distinct from other property and, instead, deposited the funds into an account that did not clearly identify the property as belonging to Albert. He did not avoid the conflict-of-interest that presented itself in depositing funds into a joint account to which Christopher had unfettered access in his personal (as opposed to fiduciary) capacity. He did not keep a record of the transactions involving the subject funds which were the two largest deposits ever made to the joint account as reflected in the record on appeal. Chr capacity as attorney-in-fact for Albert. A prudent person acting as attorney-in-fact would have put the subject funds in an account that only Albert or his attorney-in-fact, acting in such capacity, could have accessed. Importantly, the POA did not authorize Christopher to create a survivorship interest in subject funds by depositing them into the joint account. There is no evidence that Albert instructed Christopher to deposit the funds into the joint account, that Albert intended for this money to be deposited in the joint account, or that Albert knew the money was deposited into the joint account. The survivorship interest in the subject

into the joint account violated section 4264. (See § 4264, subds. (c) & (e).) In Schubert v. Reynolds, the defendant was one of four daughters of the decedent. (Schubert v. Reynolds (2002) 95 Cal.App.4th 100, 102 (Schubert).) Approximately two

appointing the defendant as his attorney-in-fact. (Ibid.) The day before the decedent died, the

defendant, in her capacity as attorney-in fact, created an inter vivos trust which she executed as both trustor and trustee. (Ibid.) The inter vivos trust created in the

Id. at pp. 102, 104.) The plaintiff (i.e., filed suit for declaratory relief and constructive trust. (Ibid.) The matter was tried and a judgment issued declaring the inter vivos trust invalid. (Id. at p. 103.) The appellate court affirmed the judgment. (Id. at p. 110.) The appellate court, like the trial court before it, concluded that subdivision (f) of section 4264 prohibited the creation of the

established under either the 1988 will or the laws of intestate succession. (Schubert, at p. 104.) Similar to Schubert

will and the Trust. This violated subdivision (f) of section 4264 which provides, absent an express grant of authority in a power of attorney, an attorney-in-fact is prohibited from

on the princ 4264, subd. (f).) But for the fact the subject funds were deposited into the joint account, the monies would have passed to the Trust by virtue of -over will. t of subject funds into the joint account, Christopher would not be entitled to them. In Estate of Huston, the petitioner was the attorney-in-fact for the decedent. (Estate of Huston (1997) 51 Cal.App.4th 1721, 1723 (Huston the decedent verbally instructed the petitioner to purchase an annuity with a certificate of deposit that would be maturing soon. (Id. at p. 1724.) The decedent wanted to provide for the petitioner and it was agreed between them that the decedent would receive the annuity payments during her lifetime and that the annuity would pass to the petitioner upon her death. (Ibid.) The petitioner, in his capacity as attorney-in-fact, used the certificate of deposit proceeds to purchase the annuity and instructe annuity payments during her lifetime and that it would pass to the petitioner on Id. at pp. 1724 1725) After the decedent died, the petitioner learned that the annuity had not been stru Id. at p. 1725.) The petitioner, in his individual capacity, then filed a petition to determine ownership of the annuity. (Id will opposed the petition on grounds the power of attorney expressly prohibited the petitioner from making gifts to himself. (Id t trust for the petitioner. (Id. at pp. 1725 1727.)

consent, and approval. (Huston, supra, 51 Cal.App.4th at p. 1727.) Notwithstanding, the court reversed the judgment. (Id. at p. 1728.) Relying on section 4264, subdivision (c), which prohibits an attorney-in- himself absent express authorization in the power of attorney, the appellate court determined the gift was void because it was outside the scope of the power of attorney. (Id. at pp. 1726 Id. at p 1727.) The court

held it did not. (Ibid o an

(Ibid. med by the agent

(Ibid.) The court held that, despite the fact the evidence showed the decedent wished to make the gift, the gift was void for failure to comply with necessary formalities. (Ibid.) Here, even had evidence

existed to demonstrate that Albert wanted Christopher to have the subject funds, the lack of any written document authorizing Christopher to deposit the monies into the joint account would be fatal to concerning the subject funds.

$204,642.53 violated section 4264, subdivision (e) by creating a survivorship interest in the subject funds in his favor. Christoph section 4264, subdivision (f) by effectuating a change in the designation of beneficiaries who would have otherwise shared in the entitlement to the subject funds. Finally, nds was tantamount to gifting the funds to himself in violation of section 4264, subdivision (c). If the attorney-in-fact breaches a duty pursuant to [division 4.5 of the Probate Code pertaining to powers of attorney], the attorney-in-fact is chargeable with any of the following, as appropriate under the circumstances: [¶] (1) Any loss or depreciation in value of the principals property resulting from the breach of duty, with interest Christopher violated section 4264 which is part of division 4.5 of the Probate Code, we see no error in the probate court having ordered Christopher to deliver these sums plus interest to the current Trustee. We agree with Christopher, however, that a transpositional error occurred in the amount of the subject funds. The probate court indicated the amount of those deposits was $205,643. The evidence, however, demonstrates without contradiction that the amount was actually $204,642.53. Thus, we remand the matter to the court to correct the sum of, and interest attributable to, the subject funds and, with that modification, affirm

IV. The Probate Court Did Not Err In Ordering Christopher to Deliver to the Current Trustee Sums that Were Withdrawn From the Joint Account During

A. The Probate Court Did Not Err in Ordering Christopher to Deliver $28,059 Plus Interest to the Current Trustee The probate court found that Christopher withdrew $42,059 from the joint account

court determined, and the parties do not dispute, the amount of the annual gift tax exclusion in 2017 was $14,0 to just one-seventh of 17 percent of the [T]rust residual, plus one- 16.6

On appeal, Christopher argues the court erred by impliedly finding Albert did not give Christopher permission to make the withdrawals, a finding that is not supported by the evidence. Rather, Christopher argues, the only evidence in the record demonstrates

topher does not

demonstrates Albert wanted all the money in the joint account to pass to Christopher. -in-fact has a duty to act solely in the

subdivision (a). Respondents contend Christopher used the $42,059 on himself and for estioned, the Purdy v. Johnson (1917) 174 Cal. 521, 527. (See ibid Trustees are under an obligation to render to their beneficiaries a full account of all their dealings with the trust fund [citation], and where there has been a negligent failure to keep true accounts, or a refusal to account, all presumptions will be

against the trustee LaMonte v. Sanwa Bank California (1996) 45 Cal.App.4th 509, 517 (LaMonte beneficiary of the trust has the initial burden of proving the existence of a fiduciary duty and the trustee perform it; the burden then shifts to the trustee further note there is no evidence that Albert permitted the withdrawals. Undoubtedly, Christopher, as attorney-in-fact, had a fiduciary duty to Albert under the POA. (§§ 39, 4266.) er, performed in his capacity as attorney-in-fact. An attorney-in-fact is required to avoid conflicts of interest (§ 4232, -in- 4235, subd. (a)); and is precluded from making gifts to himself absent an express grant of authority (§ authority to make gifts to himself was limited to the federal gift tax exclusion of $14,000. Conversely, had Christopher left the withdrawn funds in the joint account and, assuming Albert would not have withdrawn the funds from the account, they would have passed to Christopher by right of survivorship. The California Multiple-Party Accounts Law (CMPAL) (§ 5100 et lifetime of all parties, to the parties in proportion to the net contributions by each, unless remaining on deposit at the death of a party to a joint account belong to the surviving

party or parties as against the estate of the decedent unless there is clear and convincing 5302, subd. (a).) lifetime, the money in the joint account belonged to Albert alone. (§ 5301.)

according to Christopher, performed under the authority of the POA. Under the POA, however, he was limited from making gifts to himself in excess of $14,000, the federal gift tax exclusion. There is no evidence Albert approved the withdrawals or an increase in the gift amount limitation. T excess of $14,000 were outside his authority under the POA. Although he had the power to withdraw from the joint account by virtue of the fact he was a joint holder of the account, he did not have the right to make the withdrawals as attorney-in-fact absent express written authorization. (Huston, supra

We agree with respondents that it was incumbent on Christopher to demonstrate sufficient authorization for the withdrawals but the record is lacking any such evidence. (See LaMonte, supra, 45 Cal.App.4th at p. 517.) ed to the

doing so, he not only violated his fiduciary duties to Albert, but he also removed the funds from the very source that would have given him a right of survivorship in the funds the joint account. Having wrongfully removed the sums from the joint account tructive trustee effectively extinguished any right of survivorship in the funds that he might have otherwise had by withdrawing them from the joint account. We conclude the probate court did not err in ordering Christopher to deliver $28,059 plus interest in the amount of $9,821, to the current trustee as a result of the aforementioned withdrawals. B. The Probate Court Did Not Err in Offsetting the Gift of $14,000 Christoph Christopher challenges the subject order to the extent it provides that the $14,000 gift that Christopher was authorized to make, and did make, to himself from the joint

my attorney in fact may make gifts in amounts not to exceed the annual federal gift tax exclusion to him or her, but only in the proportions authorized in my will, trust, and other estate planning documents not mean that such gifts must be made from trust assets. It merely limits the amount of

stributive share would result

Here, the record is silent concerning the meaning of the italicized language in the

pr documents, evidences a clear intent on the part of Albert, as principal, to protect the interests of his devisees and Trust beneficiaries in their inheritances. We

gift

joint account is not a Trust asset did not affect monies that were no longer part of the

We conclude the probate court did not err in ordering the $14,000 gift be deducted

V. Christopher contends that, in the event this court finds in his favor on any of the above matters, it Trustee fees and denial of his request for attorney fees. Because we have not found in with the minimal exception of acknowledging the need to correct a transpositional error Trustee fees and attorney fees. DISPOSITION To the extent the subject order of the probate court included an order that Christopher deliver to the current Trustee court to modify the subject order by correcting the stated principal sum from $205,643 to $204,642.53, and recalculating the interest thereon based on the corrected principal sum. All other sums ordered delivered to the current Trustee are affirmed in the amounts stated in the subject order and, together with the recalculated sums referenced above, are to be delivered to the current Trustee. All remaining provisions of the subject order are affirmed. With the modification referenced above, the subject order is affirmed in its entirety. Costs on appeal are awarded to respondents Kathy Pool- Lapham and Sharon Whiteside.

SNAUFFER, J. WE CONCUR:

LEVY, Acting P. J.

DE SANTOS, J.