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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Estate of BEARL SPROTT, Deceased.	B230531 (Los Angeles County Super. Ct. No. P421084)
WELLS FARGO BANK, N.A., Petitioner and Respondent, v. DANIEL SPROTT et al, Objectors and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, Mary Thornton House, Judge. Dismissed.

Daniel Grant Sprott, David Aaron Sprott and Michael James Sprott, in pro. per., for Objectors and Appellants.

Samuel D. Ingham III, Greines, Martin, Stein & Richland, Irving H. Greines and Kent J. Bullard, for Petitioner and Respondent.

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Daniel Sprott and his sons David Sprott and Michael Sprott appeal from a final order by the probate court instructing the trustee of a testamentary trust to make educational disbursements on a reduced basis. Because the Sprotts have no standing, we dismiss the appeal.

BACKGROUND

Bearl Sprott died in 1959. An April 1964 "ORDER SETTLING FINAL ACCOUNT, APPOINTING TRUSTEES OF TESTAMENTARY TRUST, AND DECREE OF DISTRIBUTION" (Trust Order) provided that the trust's duration was until "the death of the last person entitled to any income or benefits," or 21 years after the death of the last children or grandchildren living when Sprott died, "for as long a period as allowed by law." The trust was funded with $344,758.16 in cash. The Trust Order provided that the trustees "shall use the income of said trust estate for the education and training of any and all of the blood issue and their blood descendants of testator that shall desire to take advantage thereof, . . . for a fulltime college course at any fully accredited college or university of their choice . . . ." The Trust Order also stated that the trustees had discretion to provide for beneficiaries who became disabled. If the trustees deemed it necessary, they could make additional distributions to beneficiaries for their proper support and education, taking their financial resources and income into consideration.

In January 2010, the sole successor trustee, Wells Fargo Bank (Wells Fargo or Trustee), filed a verified "PETITION FOR ORDER MODIFYING TRUST DUE TO CHANGED CIRCUMSTANCES," stating that the fair market value of the trust assets was then $671,000 (with an annual income of $19,500). The fair market value had decreased by half in just two years, as a result of extensive distributions under the discretionary provisions of the Trust Order. If those distributions continued unaltered, the trust would be exhausted within three years. There were 19 living individuals who were, or might become, eligible for educational assistance, and there was an "exponential rise in the cost of education." Wells Fargo therefore recommended the modification of the trust by adding new language providing that annual distributions for college educational expenses were limited to five percent of the value of the trust's assets at the

beginning of each year to be paid from trust income, and to the extent that income was not sufficient, from the trust principal.

On March 5, 2010, Daniel Sprott (Sprott), one of Bearl Sprott's grandchildren at the time of his death, and Barbara, Richard, Matthew, David, and Michael Sprott, filed in pro per an "OBJECTION TO MODIFICATION OF TRUST: FRIVOLOUS & WASTE OF TRUST ASSETS." The objection argued that only trust income should be used. In an addendum, Sprott argued that if given discretion, the Trustee would favor other, less needy family members over Sprott's family.[1] Sprott also complained that the Trustee had not provided financial assistance when he was hospitalized for a heart attack.

The court ordered the appointment of a guardian ad litem, Lawrence J. Kalfayan, to represent minor and unascertained trust beneficiaries. Kalfayan filed an initial report in June 2010, reporting that the "'changed circumstances,' as represented by Petitioner Wells Fargo Bank, are attributable to (a) generous discretionary distributions made during only the one-year period of December 2008 to December 2009, apparently amounting to more than $300,000; and (b) the substantial increase in the cost of college education." The report also addressed Sprott's objections. Kalfayan recommended that the court grant the proposed modification limiting annual distributions to five percent of the fair market value of the trust assets, and also recommended that only trust income, not principal, be distributed.

After a hearing, the court ordered the parties to participate in mediation. At a further hearing in September 2010, the parties reported that three meetings with a mediator had not resolved the issues. Sprott objected that Kalfayan was subject to a conflict of interest, in that he was representing not only minors but unborn potential beneficiaries, and expressed his concerns that his sons now attending college might not receive enough to remain in school. The court ordered further briefing.

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[1] Sprott had six children, two of whom were enrolled or about to enroll in college, and younger sons, Michael and David, who were not yet college age. His children who attended college all received money from the trust.

Kalfayan filed a supplemental report, stating that in order to accommodate one of Sprott's objections, he supported an order requiring no modification of the trust language. He also supported limiting annual distributions to five percent of the fair market value of the trust, and allowing for trustee discretion within that fixed amount. The report also noted that at the current rate of distribution, the trust would be completely exhausted by the time Sprott's two youngest children were ready to enroll in college. Sprott filed another objection, accusing Kalfayan of a conflict of interest in that he would favor the wealthy families over Sprott's family. Wells Fargo filed a response to the objection, noting that the trust corpus had diminished in the nine months since the filing of Sprott's objections, due to distributions and the cost of litigation.[2] Pursuant to a request by Kalfayan based on the conflict identified by Sprott, the court ordered that Sprott's children be excluded from the class of beneficiaries represented by Kalfayan.[3] The court declined to appoint an additional guardian ad litem for Sprott's children. Sprott filed additional briefing, continuing to object on several grounds.

The court signed a decision dated November 29, 2010, stating: "It is the duty of this court to adhere as closely to the testamentary intent of Bearl Sprott; the compromise reached between Wells Fargo and the [guardian ad litem], after considering the concerns of Daniel Sprott, comprises this goal." In an "ORDER INSTRUCTING TRUSTEE," filed December 28, 2010, the court noted that the scope of Kalfayan's representation as guardian ad litem was modified to exclude Sprott's children. The order denied the request for modification without prejudice, and instructed Wells Fargo to make

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[2] Sprott also litigated a contention that beneficiaries with the surname Sprott should receive preference, which the court found meritless, eventually imposing sanctions. Sprott has filed a separate appeal from the court's order.

[3] Kalfayan stated that the conflict was not with Sprott's children, but "between me and Mr. Sprott. I believe that all the work that I've done . . . [is] appropriate and proper and in the best interests of the minors and unascertained beneficiaries that I was appointed to represent. [¶] Mr. Sprott seems to have a different agenda. But I can't endorse it because that would be at odds with the interest of all the minors and unascertained beneficiaries."

distributions for educational purposes in an amount not more than five percent of the net fair market value of the trust assets, paid from income and, if income was insufficient, from principal. The order included distribution guidelines.

Sprott and his minor sons Michael and David filed this appeal in pro. per.

DISCUSSION

Wells Fargo, as successor trustee, argues that Sprott, Michael, and David lack standing to appeal. We agree.

An "aggrieved" party has standing to appeal. (Code Civ. Proc., § 902.) A party is aggrieved if the party's "rights or interests are injuriously affected by the judgment. [Citations.] [The party's] interest '"must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment."' [Citation.]" (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) A lack of standing is a jurisdictional defect, so that if an appellant lacks standing, we do not reach the merits of the appeal. (*Estate of Bartsch* (2011) 193 Cal.App.4th 885, 890; *Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 1000.)

Neither Sprott nor his sons Michael or David is aggrieved by the court's order, which did not modify the trust, instead instructing the Trustee to limit future distributions for college expenses to five percent of the fair market value of the trust, paid from income and, if income was insufficient, from the principal.

Sprott does not contend that he is personally aggrieved or that he is (or even was) a beneficiary of the trust's provisions for educational expenses. Although he argues that he is aggrieved because he is entitled to financial assistance because of disability, there is no finding in the record before us that Sprott was disabled, or that the Trustee exercised discretion whether to provide for a disabled beneficiary as to Sprott. Further, Sprott's college-age sons, who apparently were receiving trust funds, did not appeal.

There is no showing that the two other appellants, Sprott's younger sons Michael and David, were of college age and otherwise eligible for education payments when the

petition was filed or the order issued.[4] There is also no showing that the court's instructions to the Trustee, limiting disbursements to five percent of the trust's fair market value, had or would have any negative effect on either Michael or David, should they receive payments. Michael and David were therefore not aggrieved by the court's instructions to the Trustee. And although Sprott protests the appointment of the guardian ad litem, as well as the inclusion of unborn beneficiaries along with existing minor beneficiaries in the group represented by the guardian ad litem, the court relieved Kalfayan of his appointment as to Sprott's sons because of that conflict. Sprott's, Michael's, and David's argument that they were denied a guardian ad litem, while other potential beneficiaries received one in the person of Kalfayan, rings hollow in the light of their successful efforts to have Kalfayan removed as Michael and David's guardian ad litem.

The possibility that in the future, David or Michael might receive less from the trust for educational expenses (if indeed they choose to attend college) than they believe they might have received if the court had not issued instructions to preserve the trust, is too remote and speculative to make them "'aggrieved'" under Code of Civil Procedure section 902. (*Bartsch*, *supra*, 193 Cal.App.4th at p. 890.)

Sprott, David, and Michael lack standing to appeal, and we therefore dismiss.

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[4] Sprott represents that Michael was 11 and David was 15 when the order issued in December 2010.

DISPOSITION

The appeal is dismissed. The parties are to bear their own costs.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.