

No. _____

IN THE SUPREME COURT OF THE UNITED
STATES

ESTATE OF JANE L. MARSH, and MICHAEL WEISS
Petitioners.

vs.

STEPHEN D. MARSH and DAMON MARSH,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
CALIFORNIA COURT OF APPEALS, DISTRICT 4, DIV 3

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOURTH APPELLATE DISTRICT
DIVISION THREE

Appeal from orders of the Superior Court of Orange County, David L. Belz, Judge. Appeal dismissed.

Michael A. Weiss in pro. per. for Objector and Appellant.

Law Offices of Stephen M. Magro, Stephen M. Magro and Andrew C. Kemper for Petitioners and Respondents.

We are now on the eighth and ninth appeals filed by

attorney Michael A. Weiss in his never-ending quest to wrest the assets of the deceased husband of his now deceased mother from the deceased husband’s son and grandchildren. In this ninth appeal, Weiss, individually and as the executor of the estate of his deceased mother, Jane L. Marsh (Jane)¹, appeals from the February 21, 2017, formal order granting two petitions for preliminary distributions for the estate of Jane’s deceased husband, Monroe F. Marsh (Monroe). The notice of appeal indicates Weiss also seeks to “collaterall[y] attack” several prior court orders. Respondents, who are executors of Monroe’s estate, filed a motion to dismiss the appeal along with a request for judicial notice.² Weiss opposed the motion and objected to the request for judicial notice. Finding Weiss lacks standing to object to orders concerning the distribution of Monroe’s estate, in which our prior opinions have confirmed he has no interest, we grant the motion to dismiss. We also order sanctions imposed against Weiss for

having pursued this frivolous appeal.

In a companion appeal filed concurrently with this opinion, Estate of Marsh (April 11, 2018, G054553) [nonpub. opn.] (Marsh 8), Weiss challenged the probate court’s January 10, 2017, minute order concerning the same two petitions regarding distribution of Monroe’s estate addressed in the court’s February 21, 2017, formal order. We dismissed the appeal in Marsh 8 for the same reason we dismiss this appeal, i.e., lack of standing, and we imposed sanctions against Weiss for the same reasons as in this appeal.

FACTS AND PROCEDURAL BACKGROUND

The historical and procedural facts have been set forth in detail in our prior seven unpublished opinions. Nevertheless, we provide an overall summary of the proceedings to date, which we incorporate by reference from our prior appeals. Additional facts relating to the imposition of sanctions will be discussed in Part II of this

opinion.

I. Facts Underlying the First, Second, Third, and Fourth Appeals

When 87-year-old Monroe married 83-year-old Jane in 2003, he owned as his separate property, a residence in Irvine, California and other assets, all of which he kept in his own name. That year, Monroe obtained a reverse mortgage on the Irvine residence, secured by a trust deed, and incurred over \$620,000 in debt on it during his lifetime.

In 2007, Monroe executed a will with a no contest clause. The will gave Jane the “right to occupy” the Irvine residence, rent free, “for the balance of her life,” but left the remainder of his estate to his son Stephen Marsh and Stephen’s family.

After Monroe died in 2009, Stephen Marsh and his son Damon Marsh (respondents) petitioned to probate the will and were appointed executors of Monroe’s estate. In June

2010, Weiss began his protracted but unsuccessful quest to obtain the assets of Monroe’s estate. Weiss filed two civil actions and a will contest in the probate action on behalf of his mother, claiming she was entitled to all of Monroe’s property based on a marital partnership theory. Under that theory, Jane’s marriage to Monroe created a partnership in which all of Monroe’s separate property became “‘partnership’ property” to which she succeeded upon his death as the “‘surviving partner.’” Jane, with Weiss’s help, also paid off the reverse mortgage on the Irvine residence. Relying on the trust deed securing the mortgage, Jane asserted ownership of the Irvine residence as the surviving spouse. Thereafter, she recorded a grant deed purporting to transfer the title of the residence to Weiss.

Respondents defeated these claims, obtaining dismissals of the civil actions and the will contest. They had Monroe’s will admitted to probate and filed a petition under Probate Code section 8503 to determine title to the

Irvine residence. Respondents moved for summary judgment, which resulted in a determination that neither Jane nor Weiss had any interest in the Irvine residence. Respondents also successfully petitioned under section 11700 to declare that Jane’s actions in the probate proceedings violated the will’s no contest clause, causing a forfeiture of her rights under it.

II. Our Opinions in the First, Second, Third, and Fourth Appeals

The preceding rulings formed the basis of the first four appeals. In *Estate of Marsh* (June 13, 2014, G048211) [nonpub. opn.] (Marsh 4), we summarized our first three opinions as follows: “In *Estate of Marsh* (Feb. 7, 2012, G044938) [nonpub. opn.] [(Marsh 1)], we dismissed Jane’s appeals from orders that consolidated her first civil action against the estate with this probate matter and sustained a demurrer to her first amended will contest. Our opinion affirmed orders dismissing the civil action and denying

Jane’s motion to vacate that dismissal. We found the lawsuit procedurally improper because, ‘it represent[ed] a claim against [the] estate and therefore should have been brought under the procedures prescribed in the Probate Code’ (id. at p. 14) and substantively, it asserted a frivolous marital “partnership theory” (id. at p. 15) ‘predicated on the idea that, upon [her] marriage [to [Monroe]], all of his separate property investments became either community or “partnership” property to which she succeeded upon his death’ (id. at pp. 2, 15-18).

“The same day we issued an opinion in a companion appeal. (Estate of Marsh (Feb. 7, 2012, G045474) [nonpub. opn.] [(Marsh 2)].) It dismissed Jane’s appeals from orders that consolidated her second civil action against the estate with [the] probate matter and denied her motion to abate a petition to determine title to [Monroe’s] Irvine home (. . . § 850 . . .). ([Marsh 2], supra, G045474 at p. 5.) We also affirmed orders that admitted Marsh’s will to probate,

granted letters of administration to [respondents] again rejecting arguments based on the frivolous marital partnership theory, and dismissed Jane’s second civil action. (Id. at pp. 5-7.)

“Ten months later we issued an opinion in Jane’s third appeal affirming a judgment for [respondents] on their section 850 petition which declared the estate held title to the Irvine residence. (Estate of Marsh (Dec. 7, 2012, G046446) [nonpub. opn.] [(Marsh 3)].) We rejected Jane’s reliance ‘on her affidavit of surviving spouse under section 13540’ because ‘the statute’s plain terms demonstrate it does not apply to separate property’ ([Marsh 3], supra, G046446 at p. 6), and [Weiss] could not claim to be her ‘bona fide transferee . . . because the property was never validly transferred to Jane in the first place” (id. at pp. 7, 12). Our opinion also rejected Jane’s claims based on the doctrine of estoppel (id. at pp. 7-10), the law of irrevocable trusts (id. at pp. 10-11), the arbitration clause in a deed of

trust securing a reverse mortgage [Monroe] had obtained (id. at pp. 12-13), and the assertion this court prematurely issued the remittiturs in the prior appeals (id. at pp. 13-14). However, we reversed an order that imposed sanctions on Jane for failing to appear at a settlement conference. (Id. at p. 14.)” (Marsh 4, supra, G048211, at pp. 2-3.)

Weiss filed the fourth appeal on behalf of Jane and himself in propria persona as an objector in the probate action. Our opinion affirmed an order determining Jane was not entitled to any distribution under Monroe’s will because she had violated its no contest clause without probable cause. (Marsh 4, supra, G048211, at pp. 3, 12-13.) We agreed with respondents that Jane lacked probable cause because her claims about the violation of her property rights in her capacity as surviving spouse, “owner of separate and community property, as heir, as creditor, and as a surviving partner” were “the same arguments this court found were frivolous in the prior appeals.” (Id. at p.

12.) We applied the law of the case doctrine to bar Weiss and Jane’s claims the probate court lacked jurisdiction due to our allegedly premature issuance of remittiturs in Marsh 1, supra, G044938 and Marsh 2, supra, G045474, and rejected their recurring argument “the income produced by [Monroe’s] assets during their marriage constitutes community earnings and that [Monroe] gave away much of this income in violation of [Jane’s] community property rights[,] . . . [and] her claim that title to the [Irvine residence] was reconveyed to her upon her payoff of the reverse mortgage, including her assertion that the principles of trust law apply to deeds of trust.” (Id. at p. 12.) We reasoned, “we rejected these arguments in the earlier appeals and the doctrine of the law of the case bars Jane from reasserting them in this case.” (Ibid.) Finally, we found meritless Weiss and Jane’s myriad of challenges to the probate court’s granting of respondents’ section 11700 petition to declare Jane disinherited under the will. (Id. at

pp. 7-10.) We need not repeat them all because the reasoning and result is not relevant to this appeal.

III. Facts Underlying the Fifth, Sixth, and Seventh Appeals and Our Opinions

After we issued our opinion in Marsh 4, *supra*, G048211, respondents prevailed against Weiss and Jane’s (1) combined petitions for “family support,” an allocation of community debts, temporary possession of the Irvine residence, and a declaration Weiss owned the Irvine residence; (2) motion to correct “clerical errors;” and (3) *ex parte* application under section 10588 to prohibit respondents from selling the Irvine residence without court supervision. Weiss thereafter unsuccessfully opposed respondents’ petition for an order confirming the all cash sale of the Irvine residence. To avoid losing a favorable purchase offer, respondents requested and received an order allowing them to complete the sale during the pendency of the appeal from the prior order granting

respondents’ petition to confirm the sale. Respondents thereafter completed the sale.

Weiss, in *propria persona*, filed the fifth, sixth, and seventh appeals as an individual and as executor of his now deceased mother’s estate and those appeals were from the orders issued after we filed our opinion in Marsh 4, *supra*, G048211. In *Estate of Marsh* (Nov. 7, 2016, G052082) [nonpub. opn.] (Marsh 5), we dismissed as moot Weiss’s appeal from the order denying his *ex parte* application to prohibit respondents from selling the Irvine residence. (Marsh 5, *supra*, G052082, at pp. 3, 7.) We affirmed the orders dismissing his combined petitions and denying the motion to correct clerical errors. (*Id.* at pp. 2, 13.)

We issued companion opinions on November 7, 2016, in the sixth and seventh appeals. Both appeals involved the sale of the Irvine residence. In *Estate of Marsh* (Nov. 7, 2016, G052208) [nonpub. opn.] (Marsh 6), we concluded Weiss lacked standing to challenge the order confirming

the sale, as well as any interest in Monroe’s estate. (Id. at pp. 2, 5-6.)

In Estate of Marsh (Nov. 7, 2016, G052574) [nonpub. opn.] (Marsh 7), we affirmed the probate court’s order granting an ex parte application to carry out the sale of the Irvine residence. (Id. at pp. 2-3.) Relying on Marsh 6, supra, G052208, we concluded, “Since [Weiss] lacked standing to challenge the order confirming the sale of the real property, [he] can have no greater interest in objecting to an order granting respondents relief from the stay triggered by [his] filing the prior appeal.” (Marsh 7, supra, G052208, at p. 3.) This brings us to Weiss’s most recent companion appeals (the eighth and ninth appeals).

IV. The Current Companion Appeals

The probate court issued a minute order on January 10, 2017, approving two petitions for distributions of Monroe’s estate and dismissing Weiss’s objections for lack of standing. The January 10, 2017, minute order is the

subject of Weiss’s eighth appeal, G054553.

On February 21, 2017, the probate court signed and filed formal orders submitted by respondents regarding the same two petitions for preliminary distributions of Monroe’s estate that were the subject of the January 2017 minute order. This February order is the subject of Weiss’s ninth appeal, which we consider in this opinion. We recognize Weiss’s notice of appeal indicates that in addition to the February order, he is “collateral[ly] attack[ing]” the January 10, 2017, minute order and numerous other orders made in this probate case between August 2010 and December 2016.

DISCUSSION

I. Motion to Dismiss

Respondents moved to dismiss this ninth appeal on the grounds Weiss lacks standing in this probate case, and therefore lacks standing to appeal any order made by the probate court. They are right. “A lack of standing is a

jurisdictional defect to an action that mandates dismissal.
[Citations.]” (Cummings v. Stanley (2009) 177 Cal.App.4th
493, 501.)

“Lack of standing may be raised at any time in the
proceeding, including at trial or in an appeal. [Citations]”
(Blumhorst v. Jewish Family Services of Los Angeles (2005)
126 Cal.App.4th 993, 1000 (Blumhorst).) “A litigant’s
standing to sue is a threshold issue to be resolved before
the matter can be reached on the merits. [Citation.] ‘If we
were to conclude that plaintiff did not have standing to
maintain the action, not having been personally damaged
by the defendants’ conduct, then there would be no need to
address the merits of her cause. Equally wasteful of judicial
resources would be a resolution on the merits without
reaching the standing issue.’ [Citation.] We will not address
the merits of litigation when the plaintiff lacks standing,
because “‘California courts have no power . . . to render
advisory opinions or give declaratory relief.’” [Citation.]

Standing “‘goes to the existence of a cause of action.”

[Citation.].’ [Citation.]” (Ibid.)

“Code of Civil Procedure section 367 provides: ‘Every
action must be prosecuted in the name of the real party in
interest, except as otherwise provided by statute.’
[Citation.] The issue of whether a party has standing
focuses on the plaintiff, not the issues he or she seeks to
have determined.’ [Citation.] ‘A person who invokes the
judicial process lacks standing if he, or those whom he
properly represents, “does not have a real interest in the
ultimate adjudication because [he] has neither suffered nor
is about to suffer any injury of sufficient magnitude
reasonably to assure that all of the relevant facts and
issues will be adequately presented.” [Citation.]’
[Citations.]” (Blumhorst, supra, 126 Cal.App.4th at p.
1001.)

In this appeal, we need not analyze the issue of lack of
standing because we already made this legal determination

in a prior appeal arising from the same underlying probate dispute. In other words, Weiss’s lack of standing is the law of the case.

Unlike res judicata and collateral estoppel, both of which arise after entry of final judgment in one lawsuit and commencement of another, the doctrine of law of the case operates within the proceedings in a single lawsuit. “Under the law of the case doctrine, when an appellate court “states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout [the case’s] subsequent progress, both in the lower court and upon subsequent appeal” [Citation.] Absent an applicable exception, the doctrine “requir[es] both trial and appellate courts to follow the rules laid down upon a former appeal whether such rules are right or wrong.” [Citation.] As its name suggests, the doctrine applies only to an appellate court’s decision on a question of law; it does not apply to

questions of fact.’ [Citation.]” (Investors Equity Life Holding Co. v. Schmidt (2015) 233 Cal.App.4th 1363, 1377.)

The law of the case may apply even where the appeal is from a decision “short of a full trial, including a judgment on a demurrer, a nonsuit order or [other] motion.

[Citation.]” (Hotels Nevada, LLC v. L.A. Pacific Center, Inc. (2012) 203 Cal.App.4th 336, 356.) “Like res judicata, the doctrine of the law of the case serves to promote finality of litigation by preventing a party from relitigating questions previously decided by a reviewing court. [Citation.]”

(George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd. (1989) 49 Cal.3d 1279, 1291.) “From a policy standpoint it is not difficult to envisage the frustrating consequences that could flow from a practice allowing different panels of the Court of Appeal to redetermine issues which were disposed of on a previous appeal in the same case.” (See People v. Shuey (1975) 13 Cal.3d 835, 840 (Shuey), overruled on another ground as recognized by

People v. Bennett (1998) 17 Cal.4th 373, 389, fn. 5.)

There are three requirements for the doctrine to apply. (See Shuey, *supra*, 13 Cal.3d at p. 842.) First, the point of law involved must have been necessary to the prior decision. Second, the matter must have been actually presented and determined by the court. And third, application of the doctrine will not result in an unjust decision. (*Ibid.*)

Weiss addresses the issue of law of the case in his opposition to the motion to dismiss. In his briefing, he makes a jurisdictional argument in addition to challenging the first and third requirements of the doctrine (apparently conceding the second requirement was satisfied). We conclude Weiss’s contentions lack merit and will address each separately below.

A. Jurisdiction

In his opposition, Weiss argues that because the trial court lacked jurisdiction to make the order, this court was

without jurisdiction to review the ruling, and “[t]he motion to dismiss cannot create jurisdiction in this appeal.” This argument is based on the faulty premise the probate court lacked jurisdiction to issue its January 10, 2017, minute order, and February 21, 2017, formal order, because the remittiturs in the Marsh 6 and Marsh 7 appeals had not yet been issued.

Code of Civil Procedure “section 916, subdivision (a) stays all further trial court proceedings ‘upon the matters embraced’ in or ‘affected’ by the appeal. . . . ‘[W]hether a matter is “embraced” in or “affected” by a judgment [or order] . . . depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the “effectiveness” of the appeal.’ [Citation.] ‘If so, the proceedings are stayed; if not, the proceedings are permitted.’ [Citation.]” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189.) The appeals in Marsh 6 and Marsh 7 involved the sale of the Irvine residence. The

proceedings here, regarding the two petitions for preliminary distributions involved issues distinct from the Irvine residence’s sale. Thus, the probate court and this court have jurisdiction.

B. First and Second Requirements for Law of the Case Doctrine

For the law of the case doctrine to apply, “the point of law involved must have been necessary to the prior decision [and] the matter must have been actually presented and determined by the court . . .’ [Citations.]” (Shuey, *supra*, 13 Cal.3d at p. 842.) For that reason, the first logical step is to identify what we did and did not decide in the prior appeals. Specifically, we will review our opinion in Marsh 6. The parties agree the issue of standing was addressed in that appeal, however, Weiss argues “the point actually decided and necessary to that opinion had nothing to do with the distribution of the proceeds of the Irvine [residence] nor any other assets.” He reads the opinion

narrowly, asserting “the point actually decided and necessary to that opinion concerned standing of appellants to object to the order authorizing the sale.” For this reason Weiss concludes the Marsh 6 opinion’s discussion of standing did not become law of the case and did not need to be followed in subsequent trial court hearings or in the appeal before us now. Weiss misconstrues the scope of the Marsh 6 opinion.

The appeal addressed much more than whether Weiss had standing to object to the sale of the Irvine residence. Weiss apparently fails to appreciate that before reaching that ultimate conclusion, this court first made the final legal determination he (and Jane) lacked any interest in Monroe’s entire estate.

The opinion in Marsh 6 plainly stated, “Prior litigation in this estate proceeding established that when Monroe married Jane, he owned the residence as his separate property. During the marriage Monroe kept his property,

including the Irvine residence, in his own name and separate from the couple’s community assets. Thus, Jane never acquired an interest in the residence during the marriage. Further, by unsuccessfully challenging Monroe’s estate plan after he died, Jane lost her life estate in the use and occupancy of the residence. [Weiss’s] claim to an interest in the Irvine residence was through his mother’s attempt to transfer title of it to him after she paid off the reverse mortgage. Since the probate court decreed invalid Jane’s assertion she acquired the residence by paying off the reverse mortgage, [Weiss’s] purported ownership interest in the property also failed. [¶] Consequently, as of the date respondents sought confirmation of the sale . . . , [Weiss] lacked any interest in Monroe’s estate, including the Irvine residence.” (Marsh 6, *supra*, at pp. 5-6, italics added.)

In conclusion, our prior opinion’s statement that “[Weiss] lacked any interest in Monroe’s estate” was a

principle or rule of law necessary to our decision. If we had concluded Weiss had an interest in the estate, we would have reached the opposite conclusion and held Weiss had standing to maintain the appeal as a “party aggrieved.” (Code Civ. Proc., § 902.) Generally, “[o]ne is considered ‘aggrieved’ whose rights or interests are injuriously affected by the judgment. [Citations.] [Weiss’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.) In probate matters, to have appellate standing, a party must “hav[e] an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment” (Estate of Colton (1912) 164 Cal. 1, 5.) Such is not the case here.

C. Third Requirement for Law of the Case Doctrine

Application of the law of the case doctrine cannot result in an unjust decision. “The law of the case doctrine applies

to this court even though the previous appeal was before the Court of Appeal, and it applies even though this court may conclude the previous Court of Appeal opinion was erroneous. [Citation.] ‘Indeed, it is only when the former rule is deemed erroneous that the doctrine of the law of the case becomes at all important.’ [Citation.] The doctrine is, we have recognized, harsh. [Citation.] Accordingly, we have declined to adhere to it where its application would result in an unjust decision, e.g., where there has been a manifest misapplication of existing principles resulting in substantial injustice, or where the controlling rules of law have been altered or clarified by a decision intervening between the first and second appellate determinations. The unjust decision exception does not apply when there is a mere disagreement with the prior appellate determination. [Citation.]” (Morohoshi v. Pacific Home (2004) 34 Cal.4th 482, 491-492 (Morohoshi).)

Weiss complains the “manifest injury . . . is obvious.” He

argues application of the law of the case doctrine will cause an injustice because trial courts must adhere to an appellate opinion lacking “careful draftsmanship.” He proclaims it is unfair that he has been unable to collect anything from Monroe’s estate. It appears Weiss’s “unjust decision” argument is little more than disagreement with the prior appellate determinations. This is not a proper reason to disregard the law of the case doctrine.

(Morohoshi, supra, 34 Cal.4th at p. 492.)

D. Collateral Attack

Weiss’s notice of appeal includes a list of approximately 20 orders entered at various points throughout the eight years of this probate litigation that Weiss intended to challenge in this appeal. Some, but not all of these orders, were discussed in Weiss’s brief and those that were not are waived. In any event, for the same reason we have dismissed the appeal of the most recent estate disbursement orders, we dismiss the portion of the appeal

regarding the other orders relating to the estate. As explained above, having determined Weiss lacks an actionable interest in Monroe's estate to be the law of the case, he lacks standing to challenge any and all orders relating to this probate litigation regarding the estate. In other words, he does not have an interest or right injuriously affected by these orders.

II. Vexatious Litigant and Sanctions Issues

A. Weiss is a Vexatious Litigant

On January 18, 2018, on this court's own motion, we directed Weiss to show cause at a hearing to be held in conjunction with oral argument on this appeal, why this court should not declare him to be a vexatious litigant and enter a prefilng order pursuant to Code of Civil Procedure section 391.7, subdivision (a). Both Weiss and respondents were afforded 15 days to file responses to the court's January 18, 2018, order. In their response, respondents informed this court that after the briefing in this appeal

was completed, the superior court granted their motion to declare Weiss to be a vexatious litigant pursuant to Code of Civil Procedure section 391, and to enter a prefilng order against him pursuant to Code of Civil Procedure section 391.7. On February 14, 2018, we notified the parties we would take judicial notice of the August 4, 2017, minute order granting respondents' motion and the prefilng order entered on August 16, 2017. We further notified the parties that because Weiss is now subject to a prefilng order prohibiting him from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed, it would be unnecessary for this court to hold a hearing on that matter. Accordingly, we will not address this matter further.

B. Sanctions

In our January 18, 2018, order, in compliance with the procedural requirements set forth in *In re Marriage of*

Flaherty (1982) 31 Cal.3d 637 (Flaherty), we also directed Weiss to show cause why this court should not, on its own motion, impose sanctions against him in both of the current appeals—case Nos. G054553 (Marsh 8) and G054796 (Marsh 9)—pursuant to California Rules of Court, rule 8.276, payable to respondents and to this court, for having filed frivolous appeals or appealing to cause delay, and for other violations of the California Rules of Court. Both Weiss and respondents were afforded 15 days to file objections or responses to the court’s January 18, 2018, order. Weiss filed opposition; respondents filed a response agreeing sanctions are appropriate and suggesting an appropriate amount.⁴ This opinion constitutes the written statement of reasons required by Flaherty for imposition of sanctions against Weiss in case No. G054553 and case No. G054796. (Flaherty, *supra*, 31 Cal.3d at p. 654.)

Code of Civil Procedure section 907 allows a reviewing court to “add to the costs on appeal such damages as may

be just” when it appears that an appeal is frivolous or taken solely for delay. California Rules of Court, rule 8.276(a), allows the Court of Appeal on its own motion to impose sanctions on a party or an attorney for: “(1) Taking a frivolous appeal or appealing solely to cause delay; [¶] (2) Including in the record any matter not reasonably material to the appeal’s determination; [¶] (3) Filing a frivolous motion; or [¶] (4) Committing any other unreasonable violation of these rules.”

In Flaherty, the California Supreme Court explained the rationale for the imposition of sanctions against a party by a reviewing court: “An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process. Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts.” (Flaherty, *supra*, 31 Cal.3d at pp.

649-650.)

We begin with the obvious ground for imposition of sanctions-the appeals are patently frivolous. Flaherty set forth both an objective and subjective standard for determining whether an appeal is frivolous: An appeal is considered frivolous “when it is prosecuted for an improper motive--to harass the respondent or delay the effect of an adverse judgment--or when it indisputably has no merit--when any reasonable attorney would agree that the appeal is totally and completely without merit.” (Flaherty, *supra*, 31 Cal.3d at p. 650.) “The two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay.” (Id. at p. 649.)

With respect to the objective standard under Flaherty, the appeals indisputably lack merit. These are the eighth and ninth appeals prosecuted by Weiss in his attempt to

wrest Monroe’s estate, the Irvine residence in particular, from Monroe’s chosen heirs—his son and his son’s family. In each of the prior seven appeals this court has emphatically rejected the bases upon which Weiss claims an interest in Monroe’s estate—i.e., Weiss’s “marital partnership theory” upon which he asserts his mother had succeeded to all of Monroe’s property upon his death, and his claim that by paying off the reverse mortgage on the Irvine residence the property was reconveyed to Jane and thus validly conveyed by her to Weiss. In Marsh 4, we affirmed orders Jane was not entitled to any distribution under Monroe’s will because she violated the will’s no contest clause and, applying the doctrine of law of the case, reaffirmed our conclusions as to Weiss’s martial partnership theory and his assertion that through Jane he held title to the Irvine residence. In Marsh 5, Marsh 6, and Marsh 7, we again reaffirmed our conclusions Jane had no interest in Monroe’s estate and Weiss lacked standing to

challenge orders concerning sale of the Irvine residence. No reasonable attorney could possibly conclude that Weiss had standing to challenge the preliminary distribution orders that are the subject of this appeal when seven prior appellate court opinions have concluded he may not.

It is equally clear Weiss has pursued the instant appeals for the improper purpose of harassing respondents and causing delay in the distribution of Monroe's estate which has now been in probate for almost 10 years. This is not Weiss's first run in with sanctions in this matter-in both Marsh 1 and Marsh 2, we ordered sanctions be imposed on Weiss personally-and not on his mother-for Weiss having filed frivolous appeals and filed appeals solely to delay, leaving it to the trial court to determine the amount. Weiss was ordered to pay over \$32,000 in sanctions to respondents relating to those appeals. In addition, in February 2015, the trial court imposed additional nonmonetary sanctions against Weiss including

requiring him to obtain approval from the supervising judge of the probate court before filing any additional pleadings in this probate matter. Despite having been sanctioned for frivolous appeals, Weiss has continued to aggressively litigate these matters-one can only assume in an effort to either wear respondents down or deplete Monroe's estate so there will be nothing left for them.

We add to the frivolousness of these appeals Weiss's other improper conduct. Weiss filed meritless motions in his prior appeals in an attempt to influence the outcome of the current appeals. After these appeals became fully briefed, Weiss filed five identical motions to recall the remittiturs in five of his prior appeals Marsh 1 (G044938), Marsh 3 (G046446), Marsh 5 (G052082), Marsh 6 (G052208), and Marsh 7 (G052574), which were denied. Weiss apparently believed he could make the prior opinions "go away" freeing him from any law of the case impact our prior decisions had on his current appeals and leaving him

free to challenge anew every order issued by the trial court in this matter. (See Cal. Rules of Court, rule 8.272(c)(3) [order recalling remittitur issued after decision by opinion does not supersede the opinion].)

In addition, Weiss has barraged this court and respondents in these appeals with frivolous motions and attempts to bypass our review that have imposed an overwhelming burden on scarce judicial resources. In the appeal in case No. G054553, Marsh 8, after filing his notice of appeal from a single January 10, 2017 order, Weiss attempted to file an amended notice of appeal designating 19 additional orders dating back to 2010. Many of the orders Weiss attempted to add to his notice were the subject of prior appeals; one was a “sticky note” written by one of the many trial judges who have presided over this matter. After we rejected the filing, Weiss filed a motion for leave to amend the notice of appeal, and after respondents filed opposition, Weiss filed a motion to withdraw his first

motion and file a different amended notice of appeal.

Within a week of this court’s January 18, 2018, order notifying Weiss we were considering imposing sanctions on him in both appeals, Weiss served this court with copies of Supreme Court petitions of review bearing the case numbers of both appeals, in which he appears to be challenging the denial of the motions to recall remittitur in the five prior appeals. Yet it does not appear Weiss actually filed those petitions for review in the Supreme Court.

Next, in addition to filing a 42-page combined opposition in response to our January 18, 2018 order, Weiss filed in both appeals a 32-page “demurrer” to our order, a document which subsequently stricken as an improper filing. Immediately following our February 14, 2018, order striking the “demurrer,” in both appeals and taking judicial notice of the trial court’s vexatious litigant prefiling order, Weiss filed petitions to transfer the appeal in Marsh 9 to the Supreme Court (Cal. Rules of Court, rule 8.552(c)

[transfer of cause that presents issue of great public importance that Supreme Court must promptly resolve]), which petition was subsequently denied. (Estate of Marsh, transfer petition denied Mar. 21, 2018, S247145.)

Additionally, Weiss has also imposed an overwhelming burden on this court by his gross over-designation of the records on these appeals. In both these current appeals, Weiss proceeded by way of an appellant's appendix. (Cal. Rules of Court, rule 8.124.) The appendix in each appeal purported to incorporate by reference the entire record from each of his seven prior appeals and one of his prior writ proceedings (Cal. Rules of Court, rule 8.124(b)(2)), attempting to add tens of thousands of additional pages to the appendix in each of the current appeals. Yet Weiss's opening briefs in both these appeals contain only a few citations to any of the pages of those incorporated records. (See Cal. Rules of Court, rules 8.124(b)(3)(A) [appendix must not contain documents unnecessary for proper

consideration of the issues]; 8.276(a)(2) [sanctions including in record any matter not reasonably material to appeal's determination].)

Based on these findings, we impose sanctions against Weiss. The damages suffered by respondents resulting from these frivolous appeals are the reasonable value of their counsel's services. (Diaz v. Professional Community Management, Inc. (2017) 16 Cal.App.5th 1190, 1217.) Respondents' counsel has submitted a detailed declaration accompanied by billing statements demonstrating respondents have incurred \$37,059 in attorney fees directly related to responding to the appeal in Marsh 8, and \$19,795 in attorney fees directly related to responding to the appeal in Marsh 9 through the date the declarations were prepared and filed. In addition, respondents have detailed another \$79,347 in attorney fees incurred in responding to the appeals in Marsh 5, Marsh 6, and Marsh 7 and in the trial court proceedings that were the subject of those three

appeals. We limit the sanctions awarded to respondents to their attorney fees directly related to these two appeals. Accordingly, as part of respondents' costs on these two appeals, they are to be awarded sanctions of \$37,059 in case No. G054553 and sanctions of \$19,795 in case No. G054796. The damages suffered by this court, and the taxpayers, are set at \$8,500 for each appeal (see *Diaz*, supra, 16 Cal.App.5th at p. 1217) an amount which is frankly modest under the circumstances.

Furthermore, although Weiss is representing himself in propria persona in both these appeals, he is a licensed attorney and the imposition of sanctions against him requires notification to the State Bar. (Bus. & Prof. Code, §§ 6086.7, subd. (a), 6068, subd. (o)(3); *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 37-38.)

DISPOSITION

Having found Weiss lacks standing to object to the distribution of an estate in which he has no interest,

respondents' motion to dismiss the appeal in case No.

G054796 is granted and the appeal is dismissed.

Respondents shall recover their costs on appeal.

As sanctions for bringing this frivolous appeal in case No. G054796 and unreasonably violating the Rules of Court, Weiss shall pay \$19,795 to respondents. Weiss shall also pay \$8,500 to the clerk of this court and the clerk of this court is directed to deposit said sums in the general fund. All sanctions shall be paid no later than 15 days after the date the remittitur is issued.

Attorney Michael A. Weiss and the clerk of this court are each ordered to forward a copy of this opinion to the State Bar upon return of the remittitur. The clerk of this court shall also notify attorney Michael A. Weiss this matter has been referred to the State Bar. (Bus. & Prof. Code, §§ 6086.7, subd. (a), 6068, subd. (o)(3).)

O'LEARY, P. J.

WE CONCUR: MOORE, J. THOMPSON, J.

2. OPINION Filed 4-11-2018 (G054553)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOURTH APPELLATE DISTRICT
DIVISION THREE

Appeal from an order of the Superior Court of Orange County, David L. Belz, Judge. Appeal dismissed.

Michael A. Weiss in pro. per. for Objector and Appellant.
Law Offices of Stephen M. Magro, Stephen M. Magro and

Andrew C. Kemper for Petitioners and Respondents.

This is the companion appeal to Estate of Marsh (April 11, 2018, G054796) [nonpub. opn.] (Marsh 9), and the opinions will be filed concurrently. Both appeals arise from probate court orders made during the administration of the estate of Monroe F. Marsh (Monroe)⁵ following his death in 2009. In this appeal, Michael A. Weiss, appearing individually and as the executor for the estate of his deceased mother Jane L. Marsh (Jane), challenges a January 10, 2017, minute order approving two petitions seeking a preliminary distribution of Monroe’s estate. A few weeks after the January 2017 order, the probate court signed and filed a formal order on February 21, 2017, regarding the exact same subject matter. Weiss filed a separate appeal from the February order, which we considered in our Marsh 9 opinion.

Stephen D. Marsh and Damon Marsh, the executors of Monroe’s estate (respondents), filed motions to dismiss and

requests for judicial notice in these companion appeals (as well as other related requests for judicial notice). We have considered Weiss's opposition to the motion and objection to the request for judicial notice filed in this appeal and reach the same conclusion as in our Marsh 9 opinion. The motion to dismiss must be granted because it is the law of the case that Weiss lacks standing to object to the distribution of an estate in which he has no interest.⁶ We also order sanctions imposed against Weiss for having pursued this frivolous appeal.

FACTS AND LEGAL ANALYSIS

In this opinion, we find it unnecessary to recite the facts and procedural background of this probate matter. This information has been set forth at length in our seven prior unpublished opinions, and for good measure again repeated in our companion opinion, Marsh 9, *supra*, G054976.³ We incorporate by reference these detailed factual summaries into our opinion.

Suffice it to say, Weiss's eighth and ninth appeals concern the same subject matter that was repeated in two consecutive court orders. First, there was the probate court's minute order filed on January 10, 2017, approving a preliminary distribution of Monroe's estate. Second, there was a formal order also regarding that distribution, prepared by respondents, which was signed and filed by the probate court on February 21, 2017. In light of the above, Weiss's eighth and ninth appeals encompass the same law of the case and jurisdictional standing issues and can be resolved using the same legal analysis.

In Marsh 9, *supra*, G054976, we granted the motion to dismiss due to Weiss's lack of standing, which is a jurisdictional defect that mandates dismissal. We reasoned the final legal conclusion Weiss lacks standing became the law of the case following our unpublished opinion in Marsh 6, *supra*, G052208. We incorporate here by reference our detailed legal analysis and conclusions regarding law of the

case in Marsh 9. Because Weiss raises similar complaints in each appeal, we also incorporate by reference our consideration and rejection of Weiss’s contentions. As stated in Marsh 9, the law of the case must be adhered to by the trial court and in subsequent appeals. (See also *Investors Equity Life Holding Co. v. Schmidt* (2015) 233 Cal.App.4th 1363, 1377.)

SANCTIONS

On January 18, 2018, in compliance with the procedural requirements set forth in *In re Marriage of Flaherty* (1982) 31 Cal.3d 637 (Flaherty), we directed Weiss to show cause why this court should not, on its own motion, impose sanctions against him in both the current appeals—case Nos. G054553 (Marsh 8) and G054796 (Marsh 9)- pursuant to California Rules of Court, rule 8.276, payable to respondents and to this court, for having filed frivolous appeals or appealing to cause delay, and for other violations of the California Rules of Court. In Marsh 9,

supra, G054976, we provide a detailed written statement of reasons required by Flaherty for imposition of sanctions against Weiss for both appeals, which we incorporate by reference into this opinion. (Flaherty, *supra*, 31 Cal.3d at p. 654.) Based upon those findings, we conclude Weiss is to be sanctioned as follows: Weiss is to pay sanctions to respondents in the amount of \$37,059 in case No. G054553 and \$19,795 in case No. G054796, and Weiss is to pay sanctions of \$8,500 to the clerk of this court for each appeal. (See *Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1217.)

DISPOSITION

Having found Weiss lacks standing to object to the distribution of an estate in which he has no interest, respondents’ motion to dismiss the appeal in case No. G054553 is granted and the appeal is dismissed. Respondents shall recover their costs on appeal. As sanctions for bringing this frivolous appeal in case No.

G054553 and unreasonably violating the Rules of Court, Weiss shall pay \$37,059 to respondents. Weiss shall also pay \$8,500 to the clerk of this court and the clerk of this court is directed to deposit said sums in the general fund. All sanctions shall be paid no later than 15 days after the date the remittitur is issued.

Attorney Michael A. Weiss and the clerk of this court are each ordered to forward a copy of this opinion to the State Bar upon return of the remittitur. The clerk of this court shall also notify attorney Michael A. Weiss this matter has been referred to the State Bar. (Bus. & Prof. Code, §§ 6086.7, subd. (a), 6068, subd. (o)(3).)

O'LEARY, P. J.

WE CONCUR: MOORE, J. THOMPSON, J.

FN1 For clarity, we refer to the deceased persons by their first names. No disrespect is intended.

2 We deny respondents' request for judicial notice filed on June 8, 2017, as unnecessary because the documents

relevant to this appeal have already been included in the record on appeal. (Davis v. Southern California Edison Co. (2015) 236 Cal.App.4th 619, 632, fn. 11.)

3 All further statutory references are to the Probate Code unless otherwise indicated.

4 On the day of oral argument in this matter, February 20, 2018, in case No. G054796, Marsh 9, Weiss electronically submitted a 654-page document as an additional/supplemental response to our January 18, 2018, order. The document was received only and not filed. The document is comprised of: (1) a photocopy of a 2010 cashier's check (which Weiss apparently claims represents the funds used to pay the reverse mortgage on the Irvine residence in 2010); (2) 638 pages of Monroe's bank records and hand written bank account ledgers with a declaration signed by Weiss in 2012 stating he is the "authorized custodian of [Monroe's] business records" in an apparent attempt to authenticate those documents; and (3) a

one-page undated “Marsden worksheet” apparently generated by Weiss on the “CFLR Propertizer.” The document begins with a scant two pages of analysis by Weiss in which he refers to anti-forfeiture policies that should compel return of Jane’s separate property to him. He also makes a vague reference to the propriety of the trial court’s vexatious litigant prefiling order, an order which has not been challenged on appeal. Weiss has not demonstrated the proposed filing is proper. Moreover, the documents attached to his submission have no relevance to whether sanctions should be imposed nor do they in any way undermine the amount of attorney fees and costs respondents claim they have incurred in this endless litigation. The clerk of the court is directed to reject the document for filing.

5 For clarity, we refer to the deceased parties by their first names. No disrespect is intended.

6 We deny respondents’ request for judicial notice filed on

June 7, 2017, as unnecessary because the documents relevant to this appeal have already been included in the record on appeal. (Davis v. Southern California Edison Co. (2015) 236 Cal.App.4th 619, 632, fn. 11.)

2A. ORDER FILED JUL 11, 2018 S248967 (G054796)

IN THE SUPREME COURT OF CALIFORNIA En banc

Estate of MONROE F MARSH, Deceased

STEPHEN D MARSH, as Executor etc et al, Petitioners

and Respondents

v.

MICHAEL A WEISS. Individually and as Executor etc

Objector and Appellants

The petition for review is denied.

CANTIL-SAKAUYE, Chief Justice

2B ORDER FILED JUL 11, 2018 S248966 (G054553)

IN THE SUPREME COURT OF CALIFORNIA En banc

Estate of MONROE F MARSH, Deceased

STEPHEN D MARSH, as Executor etc et al, Petitioners

and Respondents

v.

MICHAEL A WEISS. Individually and as Executor etc

Objector and Appellants

The petition for review is denied.

CANTIL-SAKAUYE, Chief Justice

3. ORDER FILED 7-21-17 (G052082)

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

MICHAEL WEISS, Individually and as

Executor, etc., Petitioner and Appellant,

v.

STEPHEN D. MARSH, Individually and as

Executor, etc. et al., Objectors and Respondents.

G052082 Orange County No. 30-2009-00331535

On July 19, 2017, and July 20, 2017, motions to recall
the remittiturs and requests for judicial notice in case

numbers G044938, G046446, G052082 and G052574

were filed by Michael A. Weiss.

Respondents are not invited to file responses to these
motions at this time.

The court will review the motions in conjunction with
the appeals in case numbers G054553 and G054796, which
review may include considering any motions for sanctions
against Michael A. Weiss or motions for relief under Code
of Civil Procedure section 391 et seq. that may be filed by
respondents or brought by the court on its own motion.

The court will not consider granting any motions filed
by Michael A. Weiss unless respondents have been first
invited to file a response. (Cal. Rules of Court, rule 8.54.)

O'LEARY, P. J.

4. ORDER FILED 12-14-17 (G052082)

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOURTH APPELLATE DISTRICT
DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

MICHAEL A. WEISS, Individually and as

Executor, etc., Petitioners and Appellants,

v.

STEPHEN D. MARSH, as Executor, etc.,

et al., Objectors and Respondents.

G052082 (Super. Ct. No. 30-2009-00331535)

ORDER

THE COURT:*

On July 19, 2017, and July 20, 2017, motions to recall the remittiturs in case numbers G044938, G046446, G052082, G052208 and G052574 and requests for judicial notice were filed by Michael A. Weiss. The motions to recall the remittiturs and requests for judicial notice are

DENIED.

O'LEARY, P. J.

* Before O'Leary, P. J., Fybel, J., and Ikola, J.

5. ORDER FILED 7-21-17 (G052208)

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor,

etc., et al., Petitioners and Respondents

v.

MICHAEL A. WEISS, Individually and

as Executor etc., Claimants and Appellants.

G052208 Orange County No. 30-2009-00331535

On July 19, 2017, and July 20, 2017, motions to recall the remittiturs and requests for judicial notice in case numbers G044938, G046446, G052082, G052574, and G052208 were filed by Michael A. Weiss.

Respondents are not invited to file responses to these motions at this time.

The court will review the motions in conjunction with the appeals in case numbers G054553 and G054796, which review may include considering any motions for sanctions

against Michael A. Weiss or motions for relief under Code of Civil Procedure section 391 et seq. that may be filed by respondents or brought by the court on its own motion.

The court will not consider granting any motions filed by Michael A. Weiss unless respondents have been first invited to file a response.(Cal. Rules of Court, rule 8.54.)

O'LEARY, P. J.

6. ORDER FILED 12-14-17 (G052208)

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOURTH APPELLATE DISTRICT
DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as

Executor, etc., et al., Petitioners and Respondents,

v.

MICHAEL A. WEISS, Individually

and as Executor etc., Claimants and Appellants.

G052208 (Super. Ct. No. 30-2009-00331535)

ORDER

THE COURT:*

On July 19, 2017, and July 20, 2017, motions to recall the remittiturs in case numbers G044938, G046446, G052082, G052208 and G052574 and requests for judicial notice were filed by Michael A. Weiss. The motions to recall the remittiturs and requests for judicial notice are DENIED.

O'LEARY, P. J.

* Before O'Leary, P. J., Fybel, J., and Ikola, J.

7. ORDER FILED 7-21-17 (G045474)

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor, etc.,

et al., Petitioners and Respondents.

v.

MICHAEL A. WEISS, Individually and as

Executor, etc., Objectors and Appellants.

G052574 Orange County No. 30-2009-00331535

On July 19, 2017, and July 20, 2017, motions to recall the remittiturs and requests for judicial notice in case numbers G044938, G046446, G052082 and G052574 were filed by Michael A. Weiss.

Respondents are not invited to file responses to these motions at this time.

The court will review the motions in conjunction with the appeals in case numbers G054553 and G054796, which review may include considering any motions for sanctions against Michael A. Weiss or motions for relief under Code of Civil Procedure section 391 et seq. that may be filed by respondents or brought by the court on its own motion.

The court will not consider granting any motions filed by Michael A. Weiss unless respondents have been first invited to file a response. (Cal. Rules of Court, rule 8.54.)

O'LEARY, P. J.

8. ORDER FILED 12-14-17 (G045474)

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOURTH APPELLATE DISTRICT
DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor,

etc., et al., Petitioners and Respondents,

v.

MICHAEL A. WEISS, Individually and

as Executor, etc., Objectors and Appellants.

G052574 (Super. Ct. No. 30-2009-00331535)

ORDER

THE COURT:*

On July 19, 2017, and July 20, 2017, motions to recall the remittiturs in case numbers G044938, G046446, G052082, G052208 and G052574 and requests for judicial notice were filed by Michael A. Weiss. The motions to recall the remittiturs and requests for judicial notice are

DENIED.

O'LEARY, P. J.

* Before O'Leary, P. J., Fybel, J., and Ikola, J.

9. ORDER FILED 4-26-18 (G054796)

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

FOURTH APPELLATE DISTRICT DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor,

etc., et al., Petitioners and Respondents,

v.

MICHAEL A. WEISS, Individually and

as Executor, etc., Objector and Appellant.

G054796 (Super. Ct. No. 30-2009-00331535)

ORDER

Appellant's "Motion to Vacate or Reconsider Order

Dismissing Appeal" filed on April 19, 2018, is deemed to be
a petition for rehearing. (Cal. Rules of Court, rule 8.268.)

The petition for rehearing is DENIED.

O'LEARY, P. J.

WE CONCUR: MOORE, J. THOMPSON, J.

10. ORDER FILED 4-26-18 (G054553)

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOURTH APPELLATE DISTRICT
DIVISION THREE

Estate of MONROE F. MARSH, Deceased.

STEPHEN D. MARSH, as Executor, etc.,

et al., Petitioners and Respondents,

v.

MICHAEL A. WEISS, Individually and as

Executor, etc., Objector and Appellant.

G054553 (Super. Ct. Nos. 30-2009-00331535)

ORDER

Appellant's "Motion to Vacate or Reconsider Order
Dismissing Appeal" filed on April 19, 2018, is deemed to be
a petition for rehearing. (Cal. Rules of Court, rule 8.268.)

The petition for rehearing is DENIED.

O'LEARY, P. J.

WE CONCUR: MOORE, J. THOMPSON, J.

11. CONSTITUTION CLAUSES-STATUTES INVOLVED

U.S. Const. Art. 3 Section 2. The judicial Power shall
extend to all Cases, in Law and Equity, arising under this
Constitution, the Laws of the United States, and Treaties
made, or which shall be made, under their Authority; to all
Cases affecting Ambassadors, other public Ministers and

Consuls, to all Cases of admiralty and maritime
Jurisdiction, to Controversies to which the United States
shall be a Party to Controversies, between two or more
States, between a State and Citizens of another State
between Citizens of different States, between Citizens of
the same State claiming Lands under Grants of different
States, and between a State, or the Citizens thereof, and
foreign States, Citizens or Subjects.

U.S. Const. Amendment I: Congress shall make no law
respecting an establishment of religion, or prohibiting the
free exercise thereof; or abridging the freedom of speech, or
of the press; or the right of the people peaceably to
assemble, and to petition the Government for a redress of
grievances.

U.S. Const. Amendment IV. The right of the people to be
secure in their persons, houses, papers, and effects, against
unreasonable searches and seizures, shall not be violated,
and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amendment VII. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S. Const. Amendment VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const Amendment XIV Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Calif. Const. Art. 1, §26. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Calif. Constitution Art. 6 Sec. 4. In each county there is a superior court of one or more judges.

Code of Civ.Pro 367. Real party in interest; prosecution in party's name: Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.

Code of Civ.Proc. §427.10. (a) A plaintiff who in a complaint, alone or with coplaintiffs, alleges a cause of action against one or more defendants may unite with such cause any other causes which he has either alone or with any coplaintiffs against any of such defendants.

Code of Civ.Proc. §430.80. (a) If the party against whom a complaint or cross-complaint has been filed fails to object to the

pleading, either by demurrer or answer, that party is deemed to have waived the objection unless it is an objection that the court has no jurisdiction of the subject of the cause of action alleged in the pleading or an objection that the pleading does not state facts sufficient to constitute a cause of action.

Code of Civ.Proc. §456. In pleading a judgment or other determination of a court, officer, or board, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made and to have become final. If such allegation be controverted, the party pleading must establish on the trial the facts conferring jurisdiction and creating finality.

Code of Civ.Proc. 577. Judgment Defined: A judgment is the final determination of the rights of the parties in an action or proceeding.

Code of Civ.Proc. §902. Party Aggrieved May Appeal. Any party aggrieved may appeal in the cases prescribed in this title. A party appealing is known as an appellant, and an adverse party as a respondent.

Code of Civ.Proc. 1908.5. Pleading Judgment or Order: When a judgment or order of a court is conclusive, the judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence.

Code of Civ.Proc. 1916. Grounds for Impeaching Judgment: Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.

Code of Civ.Proc. 1917. Sufficiency to Sustain Jurisdiction: The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

Probate Code 39. Fiduciary: Fiduciary means personal representative, trustee, guardian, conservator, attorney in fact under a power of attorney, custodian under the California Uniform Transfer To Minors Act (Part 9 (commencing with Section 3900) of Division 4), or other legal representative subject to this code.

Probate Code 48. Interested Person: (a) Subject to subdivision (b), interested person includes any of the following: (1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. (2) Any person having priority for appointment as personal representative. (3) A fiduciary representing an interested person. (b) The meaning of interested person as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

Probate Code 7000. Passage to devisee or intestate heirs : Subject to Section 7001, title to a decedent's property passes on the decedent's death to the person to whom it is devised in the decedent's last will or, in the absence of such a devise, to the decedent's heirs as prescribed in the laws governing intestate succession.

Probate Code 7001. Administration of decedent's property; rights of beneficiaries and creditors: The decedent's property is subject to administration under this code, except as otherwise provided by law, and is subject to the rights of beneficiaries, creditors, and other

persons as provided by law.

Probate Code 9603. Other remedies under statutory or common law : The provisions of Sections 9601 and 9602 for liability of a personal representative for breach of a fiduciary duty do not prevent resort to any other remedy available against the personal representative under the statutory or common law.

Probate Code 9650. LAW REVISION COMMISSION
COMMENTS

1990 Enactment Subdivision (c) ...It may be possible for the heir or devisee to question the judgment of the personal representative in a later proceeding to surcharge for breach of fiduciary duty, but this possibility should not interfere with the personal representative's administrative authority as it relates to possession of the estate.

Probate Code 10310. Hearing to confirm sale; necessity of sale; objections: (a) Except as provided in this subdivision, at the hearing on the petition for confirmation of the sale of the real property, the court shall examine into the necessity for the sale or the advantage to the estate and the benefit to the interested persons in making the sale.

If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or the advantage to the estate and benefit to the interested persons in making the sale. (b) The court shall examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable. (c) Any interested person may file written objections to the confirmation of the sale at or before the hearing and may testify and produce witnesses in support of the objections.

Probate Code 10313. Court order confirming sale; conditions; compensation of agent or broker; order for new sale: (a) The court shall make an order confirming the sale to the person making the highest offer that satisfies the requirements of this article, and directing conveyances or assignments or both to be executed, if it appears to the court that all of the following requirements are satisfied: (3) The sale was legally made and fairly conducted.

Probate Code 10314. Execution of conveyance or assignment of contract to purchase real property; copy of order to be recorded; rights vested by conveyance or assignment: (a) Except as provided in

subdivision (b), upon confirmation of the sale, the personal representative shall execute a conveyance to the purchaser which shall refer to the order confirming the sale and directing the conveyance to be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or some portion thereof is located.

Probate Code 11605. Effect of Order: When a court order made under this chapter becomes final, the order binds and is conclusive as to the rights of all interested persons.

Probate Code 11621. Order for Distribution; Stay of Proceedings Pending Filing of Bond: (a) The court shall order distribution under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person. (b) The order for distribution shall be stayed until any bond required by the court is filed.

Probate Code 11623. Independent Administration of Estates Act: (a) Notwithstanding Section 11601, if authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with

Section 10400): (2) The aggregate of all property distributed under this section shall not exceed 50 percent of the net value of the estate. For the purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

12. TIME, METHOD, & MANNER OF RAISING & DENYING
FEDERAL ISSUES

The citations listed below are all arranged chronologically starting with 1st appeal number. The federal questions raised were summarily denied or ignored in the accompanying appellate opinions.

A. UNCLEAN HANDS re \$640,000 CASHIERS CHECK

G044938 appellants appendix (hereafter AAO) 4a page 105 (electronic p. 115) (Mo Vacate Dismissal of Jane's 1st amended complaint (hereafter IAC) at its Ex 6); G045474 AAO 19 page 163 (electronic page 175) (1st Amended Will Contest); G046446 AAO 30 p. 662 (electronic p. 675) (Evid in Oppo to SJ Motion at its Ex 7 at its Ex 6 which was Jane's 1AC); G048211 respondent appendix (hereafter RA) 16 p.303 (electronic p. 326) (Petrn to Determine Persons Entitled to Distr at its Ex 4 which was JLM 1st Amended Will Contest); G051978 (electronic p. 124) (Petrn for Mandamus Support Docs at its Petrn for Probate Homestead); G052082 AAO 11 p. 216 (electronic p. 222) (Demurrer to 4 Combined Petns at its Ex 5 at its Ex 6); G052082 RA 6 p. 215 (electronic p. 222) (Req for JN in connection with Demurrer to 4 Combined Petns. NOTICE RA 7 omission of Cashiers Check from their Corrected Req for JN p. 244; G052208 AAO 17 page 2008 (electronic p. 2015) (Req for JN re Sanctions at its Ex 5); and at its AAO 22 p. 2241 (electronic p. 2248) Ex Parte Appl for Med Emergency (re Proposed Petrn Confirm sale RP); and at its AAO 30 p. 2333 (electronic p. 2340) (Proposed Petrn for Probate Homestead at its Ex 8); and at its AAO 39 p. 2476

(electronic p. 2483) (Proposed Obj to Petn to Confirm Sale of RP at Ex 1. **NOTICE Obj at para 13 grounded on UNCLEAN HANDS** p. 2475 (electronic p. 2482); G052574 AAO 26 Jane's Proposed Obj to Petn to Confirm Sale of RP at its Ex 1 p. 105 (electronic p. 1780); and at its AAO 21 (which was ROA from G045474 at its AAO 19 1AC p. 163 (electronic p. 3862); and at its AAO 17 (which was ROA from G052208 at its AAO 39 the 6-20-15 Proposed Obj to Petn to Confirm Sale of RP at its Ex 1 p. 1788 (electronic p. 1788) and at its AAO 21 (which was ROA from G045474 at its AAO 19 JLM 1st amended Will Contest at its Ex 6 p. 168 (electronic p. 3862); and at its AAO 22 (which was ROA from G044938 at its AAO18 JLM 1AC at its 6 p. 4015 (electronic p. 4017); G052574 RA at its Ex 5 p. 157 (electronic p. 162) [JLM 1AC).

B. JLM NOTICE -ELECTION TO TAKE UNDER LAW

March 3, 2010 Response and Objection to Petition to Probate a Will and for Letters (see G045474 at AAO 23 at page 222 paragraph 3) [Jane L Marsh] will be electing to pursue her spousal rights in regard to the family residence including suit for breach of fiduciary duties by decedent. [She will be] seeking among other things

recovery with respect to other community property that belongs to her; also see her September 29, 2011 Reply Brief in G044938 at page 2 paragraph 6 the decedent's last will is completely irrelevant to any issue in the civil matters as appellant has elected to take against decedent's will and not under it; page 17 paragraph 64 appellant in writing elected to take against decedent's will; her Opening Brief in GO45474, at page 3 paragraph 1 stating appellant in writing elected to take against decedent's will since it stated that all property owned by me is my separate property, see also page 5 paragraph 8 citing Estate of King (19 Cal.2d 354, 364) regarding election; paragraph 10 citing Burch (7 Cal 4th 246, 265) regarding forced elections, and paragraph 12 citing Estate of Murphy (15 Cal 3rd 907); her November 12, 2012 Petition for Writ of Stay, Prohibition, and Mandamus filed in California Supreme Court in case S206551 which was filed regarding the opinions in GO46446, GO45474, and GO44938, at page 10, 2nd to the last sentence, stating because petitioner elected to exercise her rights under law decedent's disposition of community property earnings and her other community and separate property which stood in the name of

decedent only were invalid dispositions.

C. COURT APPEALS ACKNOWLEDGE THAT HEIR
COULD PAY MORTGAGE

Petitioner Weiss pointed this out to the appeals court as the RT of oral argument in G044938 revealed. See page 15:26 through 16:13, and page 26:9-12 which shows Justice O’Leary had notice that Jane L. Marsh paid the mortgage from money lent to her. Page 27:26 through P. 28:45 Justice Fybil acknowledged that an heir could pay off the mortgage and p. 29:5-20; and page 30:9-17 (Same). The RT of oral argument in G044938 reveals that respondents informed the Justices that Monroe probably did not leave enough money for them to repay the underlying \$640,000 mortgage debt; and subsequently they told Judge Monarch at the very first settlement conference that they would have let the property go to foreclosure and thereafter expressed no intent of ever acquiring it for themselves as co-executors nor as individuals as they could have under the terms of the trust deed.

D. U.S. CONSTITUTIONAL RIGHTS

AOB in G044938 page 7 last paragraph re access to courts and

citing to AAO page 13 paragraph 8 (Trial Court in effect granted immunity to executors; due process clause violation due to no balancing act analysis; excessive punishment clause and petition clause violations; page 8 paragraph 4 to end; page 9 paragraph 2 unconstitutional forfeiture of \$3,000,000 creditor claim due to violation of meaningful opportunity to be heard. G044938 AOB re motion to vacate page 41 paragraphs 7, 8, and 9 denial of right of access to court, infringement of petition clause and excessive punishment clauses; page 43 paragraphs 12, 13 and 14; page 45 paragraphs 19 through 21 infringements of due process clause and petition clause; page 336 paragraph 12 contract clause violation; page 345 paragraph 12 contract clause. G044938 AAO at page 29:4-14 **court order expressly denying US constitutional claims** regarding Jane L. Marsh first amended complaint and creditor’s claim; page 136:10 to 14 opposition to constitutional claims; page 416:24 through page 417:7 Republican Form of Government Cl infringement and Due Process Clause. G045474 ARB [appellants reply brief] page 2 paragraphs 6 -8 infringement of free speech clause. G045474 Motion to recall remittitur page 25, 2nd to last

sentence re due process clause violation due to no opportunity to respond. Same content in motion to recall remittitur in G052574 and also see page 25, 2nd to last sentence re due process clause infringement regarding Judge Moberly's OSC. G045474 RT of 5-5-11; 5-12-11; 5-13-11; 5-17-11 at page 34:3-12 re jury clause infringement regarding first amended civil complaint. The same content is to be found in G046446 RT of 5-12-11; 9-14-11; 10-13-11; 1-5-12 at page 4:3-12 re 7th amendment jury clause infringement. G045474 AAO page 499 paragraph 12 re contract clause infringement; page 719 etc paragraphs 4, 8, 10 through 12 and 17 through 19 and 21-23 re denial of access to court, due process violation, petition clause and excessive punishment. G046446 p. 398:22-25 re substantive due process clause infringement. G046446 Declaration to Disqualify Justice Rylaarsdam paragraph one re due process clause bias challenge which he later denied orally from the bench. G048211 AAO, page 640 paragraphs 27 through 30 re infringements of petition clause; due process; equal protection, right to pursue happiness privacy safety; excessive punishment clause; and contract clause; page 645 sentence 3 re infringement of due

process clause (substantive). G048211 ARB page 6 last paragraph re due process clause violation concerning Probate Code 11705 order and misleading court by respondents. G052082 AOB page 5 last 2 sentences; page 32 sentence one. G052082 AAO page 349:17-19 re violation of free speech, petition, association and excessive punishment clauses due to forfeiture of Jane L. Marsh intestate succession rights. G052082 Opposition to Motion to Dismiss Appeal page 5 last 5 sentences re due process clause violations concerning unfair and unconstitutional acts by respondents as to sale of Irvine condo and infringement of equal protection clause due to discrimination on grounds of race, national origin, religion, and mental disability. G052082 Petition for Rehearing page 16 paragraphs 25 and 26 re existence of current standing under U.S. Constitution to claim due process clause infringement and pointing to AAO citations; page 27 paragraph 52 due process clause violation re lack of notice on ex parte petition to sell property notwithstanding appeal. G052082 Petition for rehearing page 16 paragraphs 25 and 26; page 27 paragraph 52 contain same content as immediately above. G052082 RT of 1-23-15; 2-27-15; 4-7-15 page 10:1-23 re

free speech, petition and association clause and due process cause
due to no evidence and structural defect; page 15:16 etc re nine of
eleven new petitions in probate barred by unconstitutional
application res adjudicata; 15:21-24 Jane L. Marsh deprived of
standing to object to absence of assigned judge Schulte; page
17:22-26 re open hostility against Petitioner Weiss by Judge
Hubbard. G052208 AOB page 10 paragraph one re free speech,
association, petition and excessive punishment clause infringements
concerning pre-filing order and post-appeal documents showing
Petitioner Weiss being treated unfairly and blacklisted. G052208
AAO re petition for mandamus page 2422 last paragraph
complaining of free speech clause infringements due to prior
restraint; page 2428 paragraph 7 re free speech clause and prior
restraint. G052208 AAO page 2213 last part of paragraph 3 re due
process clause infringement because of change of burden of proof
requirements; page 2447 paragraph 11 re due process clause taking
of property and/or right to acquire it. G052208 Petition for writ of
supersedeas page 10 last 2 sentences re due process clause
infringement because of prior void orders; page 17 at sentence 4 re

due process clause violation concerning standing to claim
community property interests; page 19 last sentence indicating that
RT showed no evidence was offered, received, or considered, at time
of hearing. G052208 Writ of Supersedeas re sale of real property
page 1 paragraph one re due process clause violation because ex
parte practice; page 16 first sentence re due process clause violation
because of insufficient evidence; page 23 at sentence 1 re due
process clause; page 198 paragraphs 1 through 4 because Code of
Civ.Proc. 128.7 order infringed upon free speech, petition, and
association clauses because of lack of safeguards (procedural and
substantive) and infringement of property and liberty rights; page
199 topic 3 paragraph one re free speech clause infringement
concerning lis pendens; page 218 paragraph 35 infringement of right
to file pleadings; free speech, petition and association clauses
violated due to lack of safeguards. G052574 AOB page 8 paragraph
one re infringement of 4th amendment seizure of Jane L. Marsh's
contract rights under trust deed, her Moore-Marsden community
property rights etc.; page 25 last paragraph re Code of Civ.Proc.
128.7 order is censorship and has no safeguards hence violating free

speech clause; page 28 paragraph one re respondents unfairly infringing upon free speech, association, petition, equal protection, and due process clauses because they act in substantive patently arbitrary manner; page 54 paragraph 2 re excessive punishment concerning Jane L. Marsh's violation of no contest clause in spouses last will. G052574 ARB page 28 paragraph one re Jane L. Marsh 9 new probate petitions alleging infringement of free speech, petition, association excessive punishment, and supremacy clauses because trial judge punished her by striking out her petition to compel respondents to perform their duties in compliance with Probate Code. G052574 Petition for rehearing page 16 paragraph 25, 26; page 27 paragraph 52. Same content is to be found repeated in identical petitions in G052208 and in G052082. G052574 Motion to recall remittitur page 25 2nd to last sentence. The same content is found identical motions in G052208; G052082; G046446; and G044938. G052574 Opposition to motion to dismiss appeal page 2 paragraphs 4, 5 and paragraphs 8 and 9 and 13 and 15. The same content is found in G052208-20. G054553 re amending the notice of appeal page 8 last paragraph re due process clause infringement in

G044938 opinion due to drive-by jurisdictional ruling; page 12 paragraph M re due process clause violation because of unconstitutional res adjudicata characterization. G054553 Demurrer to OSC concerning pre-filing order and sanctions p. 8 to 13 re supremacy clause infringement because two petitions for preliminary distribution violated Due Process Cl since standing to complain of new constitutional violations existed, with cites to AAO; page 15 paragraph 23 respondents misleading court by submitting pleadings without their vital exhibits and 850 summary judgment was product of lack of full and fair trial; Justice O'Leary deprived appellants of full and fair hearing because she submitted no evidence to support her claim to courts costs due to frivolous appeal and appeared to be joining forces with respondents in violation of due process clause. G054553 Opposition to OSC concerning sanctions and pre-filing order page 18 paragraph 17 re petition clause violation by Court of Appeals due to dismissing appeals without exam of current evidence on standing. G054796 Opposition to Motion to dismiss appeal page 22 last paragraph re contract clause violation; page 33 last 2 sentences re structural defect in Probate Code 850 summary

judgment. G054796 Objection to evidence re motion to dismiss appeal page 19 paragraph one re due process clause violation because orders were supported by no evidence since RT's of the hearings on 6-10-15 and 1-11-17 showed it, furthermore the 7-15-15 ex parte order to carry out sale notwithstanding the appeal was an unauthorized proceeding infringing due process clause rights. G054796 ARB page 6, 2nd to last sentence re infringements of supremacy, due process, and free speech clauses concerning OSC pre-filing orders as well as in the Code of Civ.Proc. 128.7 prefiling order; contract clause; page 7 last sentence re due process infringement concerning Code of Civ.Proc. 128.7 order page 8 paragraph one re due process clause (substantive and procedural) infringement due to lack of full and fair hearing; page 10, 2nd to last sentence and page 12 para 2 alleging supremacy, due process, and free speech clause infringements concerning OSC pre-filing order re overbroad and infringed on Excessive punishment Clause; page 15 paragraph one concerning pre-filing order because it was not narrowly tailored and infringed on rights under due process and excessive punishment clauses since no balancing act analysis

performed; page 22 paragraph 3 re infringement of petition, association, due process, excessive punishment, and supremacy clauses; p. 30 sentence 1 re supremacy clause; page 34 last sentence re supremacy clause; p.. 38 at 2nd to last paragraph re excessive punishment clause; and, page 44 paragraph one re infringement of due process, free speech, and supremacy clauses. G054796 Demurrer to OSC concerning pre-filing order and sanctions page 8 paragraph 13; page 15 paragraph 23 are same in content as stated in G054553 Demurrer to OSC and see also page 19:1st sentence re due process clause violation due to no evidence.. G054796 Opposition to OSC concerning sanctions and pre-filing order page 14 last 2 sentences re excessive punishment clause infringement due to forfeiture of \$640,000 mortgage pay back money and \$821,000 community accumulation money given away by spouse during marriage; page 18 paragraph 17 re petition clause infringement and paragraph 21 re due process clause infringement; page 30 last sentence re access to court denial and page 31 sentences one through 3 re due process clause violation by respondents telling trial judge they would not sell Irvine condo to Petitioner Weiss nor Estate of Jane L. Marsh at any price or

on any terms whether it be \$1.1 million or \$2.1 million thus exhibiting unfair trial in violation of due process clause; page 37 paragraph 30 re 4th amendment seizure clause infringement. G054796 Opposition to OSC concerning sanctions and pre-filing order p. 18 paragraph 17 re petition clause violation. G054796 AOB page 8 first 2 sentences re due process violation because no evidence offered nor received at time of hearing on 2 preliminary distribution petitions; page 14 paragraph 2 re due process clause violation because of no evidence as well as bias and favoritism by trial judge; p.25 3rd sentence re standing denied to raise challenge to performance of statutory and constitutional duties by respondents infringed on due process clause; page 57 paragraph one re petition clause infringement; page 60 last paragraph. G054796 AAO Vol 3 page 663 paragraph 5 and 6 concerning continuing infringement of due process clause because of bias; page 690 last sentence and page 691 first 3 sentences and para 1 through page 699 re due process clause infringement due to patently arbitrary orders confirming sale of Irvine condo and to carry it out notwithstanding appeal, discrimination based on race, national origin and religion,

infringement of right to free speech and association; and, excessive punishment as to 2-27-15 order; page 701 last paragraph re due process clause infringement; page 765 paragraph 8 re false evidence presented and respondents joining forces with trial judge Belz stating We'll end up with an order to get this thing sold if you let me change the terms of sale today at the hearing because I can get an order to sell notwithstanding appeal and prevent any shenanigans in court of appeals; page 768 paragraph 13, 17, 18, and 19 re infringements of due process clause because of patently arbitrary conduct followed by presenting no evidence but getting orders to sell anyway and infringement of excessive punishment clause.

E. UNFAIRNESS ISSUE

G044938 AAO page 309 paragraph 13. G044938 RT oral argument Court of Appeals at page 32:15 through p. 33:11 and 16-18 and 22: through p. 34:5 and 19: through p. 35:1 and page 36:9-10. G045474 RT of 5-5-11; 5-12-11; 5-13-11; 5-17-11 at page 32:7. G046446 ARB page 432:11-22 (unfairness by Monroe F. Marsh). G046446 RT of 5-12-11; 9-14-11; 10-13-11; 1-5-12 at page 2:7. G048211 AAO at page 712 paragraph 5. G048211 ARB at page 23

paragraph one; page 28 paragraph one. G052082 Petition for Redhearing at page 22 paragraph 39 saying the same thing in G052574 Petn for Rehearing at page 22 paragraph 39. G052208 AOB at page 10 paragraph one and p. 24 paragraph 9. G052208 AAO at page 2050 paragraph 54 (unfairness by Monroe F. Marsh); page 2187 paragraphs 5 through 8, and paragraph 11. G052208 ARB at page 36: entire page. G052208 Request to Presiding Justice to Excuse Service of Specially Filed Motion for Temp Stay at page 11 last paragraph: P. 13 Sentence 4. G052574 AOB at page 16: paragraph 2. G052574 Oppo to Motion to Dismiss Appeal at p. 5 last 2 sentences; page 4 last sentence of paragraph 12 and paragraph 13. The identical language is found in G052208-20 as well as in G052082 at page 5 whole page. G054553 Reply to Oppo re Motion For Permission to File Amended Notice of Appeal at pages 7, 8 and 9. G054553 Motion to Vacate or Reconsider Order Dismissing Appeal at page 12 paragraph 7. G054796 Opinion page 12 paragraph 2. G054796 Opposition to Motion to Dismiss Appeal at page 33 last sentence. G054796 Response to Courts Own Motion to Impose Monetary Sanctiuons for Frivolous Appeal at page 19 sentence 2

(Magro). G054796 Motion to Vacate or Reconsider Order Denying Appeal at page 12 paragraph 7. G054796 AAO at page 585 para. 9.

F. FUNDAMENTAL PRINCIPLES

G044938 AOB at page 27 paragraph G, p. 28 through first 5 sentences (Jane L. Marsh has fundamental rights to privacy and freedom from arbitrary government action [not just marital partnership theory] to which Justice Rylaarsdam replied that Petitioner Weiss is violating fundamental probate and family law principles in his opinion in G044938 at page 20 last paragraph and G045474 at page 20 last paragraph. Also see G044938 RT of oral argument page 17:5 through 18:7 where Petitioner Weiss is asserting 4th amendment search and seizure as well as privacy rights. G044938 AAO at page 66 paragraph 70; page 208 paragraph 5; page 209 paragraph 6; page 364 paragraph 70 and paragraph 10. G044938 Response to OSC re Sanctions page 9 paragraphs 1 and 3. G045474 Petition for Rehearing at page 10 paragraph 3 through p. 11 paragraphs 1 through 3. G045474 AAO at p. 90 response box 3 of Judge Sherman; page 666 paragraph 5 through page 667:8. G046446 AOB at page 9 paragraph one. G052208 AOB at page 2249

paragraph 19. G052208 ARB at page 43 entire last paragraph.
G052574 AOO at page 1857 last paragraph; page 3823 paragraph 70. G054796 AOB at p. 42 entire last paragraph. G054796 AAO at page 643 topic one and page 651:20-22 Mr. Magro says Weiss is infringing on his fundamental right and is causing harm to him by false recitals and that he is not causing harm to any interested person or creditor.

G. FALSE RECITALS IN ORDERS

G044938 RT of oral argument in Court of Appeal at page 37:16-22 false misrepresentation about trust deed allowing 6 months to repay mortgage. P. 38:15-24 false representation that Jane L. Marsh dismissed her family allowance petition on day of trial; rather it was because Mr. Magro demanded it be dismissed before he would talk settlement. G045474 Motion to Recall Remittitur at page 59:14-18. G048211 RA [respondents appendix] at page 591:22 through P. 592:4 Mr. Magro says it is false that Judge Monarch said I never denied anything to you. G052574 AOB at page 38 before paragraph one and page 53 paragraph one. G052574 ARB at page 18 paragraph one. G052574 Motion to recall remittitur at page 20

paragraph one; and, the same contention is to be found in G052208 (same motion); and in G052082 (same motion); and G046446 (same motion); and G044938 (same motion). G054553 Motion to file amended notice of appeal at p.32 paragraph 31. G054796 Objection to evidence & request for judicial notice re Motion to Dismiss Appeal at page 9 paragraph one; page 13 at (5) and (6). G054796 Opposition to OSC re Vexatious Litigant and Sanctions at page 15 paragraph 12. G054796 AOB at page 20 paragraph 5; page 21 paragraphs 6, 7 and 8. G054796 AAO at page 712 before paragraph one; page 728 paragraph one; page 763 paragraph 5; page 764 paragraph 6; page 765 paragraph 8; page 766 paragraph 7 through 9; page 768 paragraph 13; page 643 topic one (Magro) says he is not causing injury to any interested personal creditor but rather that Petitioner Weiss is doing harm to him; page 651:20-22; page 722 paragraph 19.

13. OTHER MATERIAL ESSENTIAL TO UNDERSTAND THE

PETITION

A. TRUST DEED PAYOFF DOCS (Partials)

FINANCIAL FREEDOM PO Box 85400
The Reverse Mortgage Specialist Austin, TX 78708

Telephone; 800-441-4428

Fax (866) 923-9006

December 28, 2009

Estate of the Monroe Marsh

51 Lakefront

Irvine, CA 92604

RE: Marsh, Monroe F

51 Lakefront

Irvine, CA 92604

Loan number; CS11402898

Cash Account Reverse Mortgage Repayment

Notice

Dear Marsh;

We are saddened to have recently learned of the passing of Monroe F Marsh and wish to convey our deepest sympathy to you and all

family and friends.

As you may be aware, Monroe F Marsh obtained a reverse mortgage secured by the above referenced property and serviced by financial freedom. Unlike traditional forward mortgages, reverse mortgages permit seniors to tap the equity they have built up over the years in their home without requiring monthly mortgage payments to satisfy the loan obligation. Upon the occurrence of a maturity event, of which the borrowers passing is one, the loan becomes due and payable. As we notify you now that the above referenced loan is due and payable, we are hopeful that our services have been true to our mission and have enhanced the financial security and independence of Monroe F Marsh.

It is our objective to make the repayment process as simple as possible. The first step that we ask a view is to please provide us with the details of your plans for paying off the loan by filling out the enclosed repayment questionnaire form and returning it to us immediately. Once we have this information, we will contact you to schedule repayment of the loan.

There are other factors we feel are important to bring to your attention. Until the loan is repaid, interest, mortgage insurance and monthly servicing fees will continue to accrue and be added to the principal balance of the loan. This simply means the loan balance will continue to grow until the loan is paid off. In addition, until the loan is paid off, property taxes must continue to be paid and hazard insurance must be kept in force. Please refer to the enclosed repayment notice for additional information on matters that should be taken into consideration in arranging repayment of the loan. We regret having to direct your attention to these matters during this difficult time and want to assure you we are available to help you through the process.

Sincerely, Lisa Harkness
800-441-4428 ext 2897

MICHAEL WEISS
ATTORNEY AT LAW

2030 MAIN ST. #1300
IRVINE, CA 92614
TELEPHONE (949) 260-9103
FAX (949) 260-9105
E-MAIL; MICHAEL-WEISS @MSN.COM

To: Lisa Harkness 3-11-10

Where is my reconveyance on Monroe Marsh payoff?
Why did you not record a reconveyance?
As you requested I sent by FedEx a cashier's check weeks ago.
Enclosed is affidavit of surviving spouse for your records.

_____s_____
Michael Weiss

00983 11-24 CASHIER'S CHECK
SERIAL #: 0098303959
ACCOUNT # 4861-505303

Office AU# 1210 (8)

Purchaser: LAW OFFICES OF MICHAEL WEISS

Purchaser Account: 0436611842

Operator ID: cu 020308 cu 003816

February 04, 2010

PAY TO THE ORDER OF ***FINANCIAL FREEDOM

ACQUISITION LLC***

***\$638,963.86**

***Six hundred thirty-eight thousand nine hundred sixty three

dollars and 86 cents***

Wells Fargo Bank, N. A.

Void if over US

\$638,963.86

4850 Barranca Pkwy. Non-negotiable

Irvine, CA 92604

For inquiries call (480) 394-3122

PURCHASER COPY

Please complete this information

recording requested by

and when recorded mail to:

Michael Weiss

51 Lakefront

Irvine, CA 92604

This space for recorders use

only

Title of document:

AFFIDAVIT OF SURVIVING SPOUSE

Succeeding to Community Property (California Probate Code

section 13540)

This document provided by Commonwealth Land Title

Company

STATE OF CALIFORNIA)

COUNTY OF Orange)

Jane Lucille Marsh of legal age, being first duly sworn, deposes and

says:

1. Monroe F Marsh, the decedent mentioned in the attached certified copy of certificate of death, was married to Affiant at the time of decedent's death.

2. Affiant and decedent at all times considered the following real property situated in the County of Orange, State of California to be community property:

Unit 31 of Lot 6 of tract number 12223, as more particularly described in Exhibit A. Assessor's parcel number 934-67-046.

3. More than forty (40) days have passed since decedent's death.

There has not been nor will there be an election filed pursuant to Probate Code section 13502 concerning this property.

I have full power to sell, lease, encumber and otherwise deal with such property pursuant to Probate Code 13540 based upon the following facts: Monroe Franklin Marsh (hereinafter Monroe) married me on 2-6-2003 in the Beverly Hills, California courthouse; and we took up our family residence at 51 Lakefront, Irvine, California. It was not until after his death that I discovered the false details of a reverse mortgage he took out on it 10-20-2003 as "a

widower". During our seven-year marriage about \$186,000 of community funds were paid on the reverse mortgage to reduce its principal. I paid off the approximate \$633,061 balance just after his death by way of exhaustion of my separate funds and the loan from my son. Monroe took over sole and exclusive control of the community property; yet, never made any meaningful disclosure to me of our community assets, liabilities, and transactions, nor about his separate assets, liabilities and transactions. Monroe did however constantly refer to the property at 51 Lakefront as our home; and was using our income to pay off the reverse mortgage. I have now discovered that he acted as if he were a single man in taking out the reverse mortgage and opening bank and stock trading accounts. Throughout our marriage Monroe commingled our community funds with his separate funds to such an extent it is now impossible to trace. During our 7 years of marriage I was never paid any monies from the income Monroe earned by his labors. I therefore claim full ownership of the 51 Lakefront, Irvine property, am recording a homestead declaration on it; and, then dispose of it by conveyance to my son while reserving a life estate in it for myself.

March 3, 2010

Signature: _____s__ Jane Lucille Marsh

Requested by Nationwide Title Clearing

when recorded mail to

Monroe F Marsh

51 Lakefront

Irvine, CA 92604

(Trustor)

Recorded in Official Records, Orange Co.

Tom Daly, clerk-recorder

2010000126498 12:13 p.m. or 3/17/10

276418S15401 1

0. 000. 000. 000. 000. 000. 000. 000. 00

Loan: 140-2898

SUBSTITUTION OF TRUSTEE and FULL

RECONVEYANCE

Whereas Monroe F Marsh was the original trustor under that certain deed of trust recorded on 10/27/2003 in the office of the County recorder of Orange County, California, as instrument number 2003001315135 in book, page

Whereas, the undersigned, as the present Beneficiary(s) under said deed of trust desires to substitute a new trustee under said deed of trust in place and stead of original trustee, now therefore, the undersigned hereby substitutes himself (themselves) as trustee under said deed of trust and does hereby reconvey without warranty to the persons legally entitled thereto all estate now held by it under said deed of trust.

Date: 02/23/2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

(MERS) AS NOMINEE FOR FINANCIAL FREEDOM

ACQUISITION LLC

by:_____s_____

Karen Compton Asst. Secretary

State of Michigan County of Kalamazoo

The foregoing instrument was acknowledged before me this 23rd day of February in the year 2010 by Karen Compton, personally known to me to be the ASST. SEC. OF MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR FINANCIAL FREEDOM ACQUISITION LLC, A DELAWARE corporation, on behalf of the corporation.

_____s_____

Carl Reed Carl M. Reed

 Notary Public, State of Michigan

 County of Kalamazoo

 My commission expires APR 11, 2012

 Acting in the County of Kalamazoo

Prepared by: Jessica Fretwell/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800) 346-9152

B. COMMUNITY EARNING DOCS (Partials)

TD AMERITRADE

2009 Consolidated Forms 1099

Apex tax identification number:

 TD Ameritrade

account number: division of TD Ameritrade Inc.

 PO Box 229

 Omaha, NE 68103-2209

MONROE F. MARSH

51 Lakefront

Irvine, CA 92604-4682

Form 1099-DIV dividends and distributions

(OMB No 1545-0110)

line #	category	amount
1a	total ordinary dividends	\$1572.71
1b	qualified dividends	\$1462.71
2a	total capital gains distributions	
	(includes lines 2b, 2c, 2d)	0.00
2b	unrecaptured section 1250 gain	0.00
2c	section 1202 gain	0.00
2d	collectibles (28%) gain	0.00

3	nontaxable distributions	\$0.52
4	federal income tax withheld	0.00
5	investment expenses	0.00
6	foreign tax paid	\$104.95
7	foreign country or US possession	see details
8	liquidation distribution-cash	0.00
9	liquidation distribution-noncash	0.00

Form 1099-B proceeds from broker & barter exchange transactions

(OMB No 1545-0715)

line #	category	amount
1a	date of sale or exchange	see details
1b	CUSIP number	see details
2	stocks, bonds, etc reported to IRS	
	-gross proceeds less commissions & options premiums	

\$194

,685.

95

4	federal income tax withheld	0.00
5	No of shares exchanged	31,350

6	classes of stock exchanged	see details
7	description	see details
	regulated futures contracts	
8	profit or (loss) realized in 2009	
9	unrealized profit or (loss) on open contracts- 12/31/2008	0

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0

0

10	unrealized profit or (loss) and open	
	contracts- 12/31/2009	0.00
11	aggregate profit or (loss)	0.00

TD AMERITRADE 2008 Consolidated Forms 1099

Apex	tax identification number:	your representative
	account number:	TD Ameritrade
	user name:	division of TD Ameritrade

Inc.		
PO Box 2209, Omaha, NE 68103-2209		
MONROE F. MARSH		
51 Lakefront		
Irvine, CA 92604-4682		
Form 1099-DIV dividends and distributions (OMB No. 1545-0110)		
line #	category	amount
1a	total ordinary dividends	\$17,867.53
1b	qualified dividends	\$17,474.18
2a	total capital gains distributions	
	(includes lines 2b, 2c, 2d)	0.00
2b	and recaptured section 1250 gain	0.00
2c	section 1202 gain	0.00
2d	collectibles (28%) gain	0.00
3	nontaxable distributions	892.96
4	Federal income tax withheld	0.00
5	investment expenses	0.00
6	foreign tax paid	2,382.11

7	foreign country or US possession	see details
8	liquidated distribution-cash	0.00
8	liquidated distribution-noncash	0.00
Form 1099-B proceeds from broker & barter exchange transactions		
(OMB No. 1545-0715)		
line #	category	amount
1a	date of sale or exchange	see details
1b	CUSIP number	see details
2	stocks, bonds, etc. reported to IRS	
	– gross proceeds less commissions	
	and options premiums	\$1,841,969.56
4	Federal income tax withheld	0.00
5	No. Of shares exchanged	104,790
6	classes of stock exchanged	see details
7	description	see details
	regulated futures contracts	
8	profit or (loss) realized in 2008	0.00
9	unrealized profit (loss) on open contracts-	
	12/31/2007	0.00

10	unrealized profit (loss) on open contracts-	
	12/31/2008	0.00
11	aggregate profit or (loss)	0.00

TD AMERITRADE	2007 Consolidated 1099	
Apex	tax identification number:	your representative
	account number:	TD Ameritrade
		Division of TD Ameritrade Inc.
		PO Box 2209, Omaha, NE 68103-229
Monroe F Marsh		
51 Lakefront		
Irvine, CA 92604-4682		
	Form 1099-MISC miscellaneous income	
	(OMB No. 1545-0115)	
line #	category	amount
2	royalties	\$0.00

3	other income	\$541.73
4	federal income tax withheld	0.00
8	substitute payments in lieu of dividends	
	or interest	\$1500
	form 1099-DIV dividends and distributions	
	(OMB No 1545-0110)	

line #	category	amount
1a	total ordinary dividends	\$25,535.57
1b	qualified dividends	\$25,535.57
2a	total capital gain distributions	
	(includes line 2b, 2c, 2d)	0.00
2b	unrecaptured section 1250 gain	0.00
2c	section 1202 gain	0.00
2d	collectibles (28% gain)	0.00
3	nontaxable distributions	1198.56
4	federal income tax withheld	0.00
5	investment expenses	0.00
6	foreign tax paid	\$3067.55
7	foreign country or US possession	see details

8	liquidation distribution-cash	0.00		0.00
8	liquidation distribution-noncash	0.00	11	aggregate profit or (loss) 0.00
Form 1099-B proceeds from broker & barter exchange transactions (OMB No 1545-0715)				
Line #	category	amount		
1a	date of sale or exchange	see details		
1b	CUSIP No	see details	Natl. Investor Services Corporation	
2	stocks, bonds, Etc reported to IRS		2006 Consolidated Form 1099	
	gross proceeds less commissions & options premiums	\$763,587.07	100 Wall Street, 24th floor New York, NY 10005	
4	federal income tax withheld	0.00		TD AMERITRADE
5	No. Of shares exchanged	32,956	Monroe F Marsh	
6	classes of stock exchanged	see details	51 Lakefront	
7	description	see details	Irvine, CA 92604-4682	
	regulated futures contracts		Corrected 04/07/06 Notice	
8	profit or (loss) realized in 2007	0.00	2005 form 1099-INT: interest income (OMB No 1545-0112)	
9	unrealized profit on open contracts-12/31/2006		*** No reportable 2005 form 1099-Int income ***	
	0.00		2005 Form 1099-DIV dividends and distribution (OMB No 1545-	
10	unrealized profit on open contracts-12/31/2007		0110)	

(box)	Amount
1a total ordinary dividends	\$33,983.22
1b qualified dividends	33,983.22
2a total capital gain distributions	\$541.00
2b unrecaptured section 1250 gain	0.00
2c section 1202 gain	0.00
2d collectibles (28%) gain	0.00
3 nondividend distributions	\$8,033.60
4 Federal income tax withheld	0.00
5 investment expenses	0.00
6 foreign tax paid	\$3,872.09
8 Cash liquidated distributions	0.00
9 noncash liquidation distributions	0.00
2006 Form 1099-B:Proceeds Fro, Broker & Barter Exch. Trans.	
(OMB No 1545-0715)	
(Box 1A)	(Box 7) (Box 1B) (Box 2) (Box 4)
DATE STOCKS	FEDERAL
OF SALE CUSIP	BONDS ETC INC TAX
OR EXCH NO.	WITHHELD

49 ITEMS - TOTAL	\$1,395,161.60	0.00
2006 FORM 1099	MISC: MISCELLANEOUS INCOME	
(OMB NO 1545-0115)		
2. Royalties		\$2.67
3 Other Income		53.60
8 Substitute Payments Lieu of Dividends		
Or Interest		174.21
Natl. Investor Services Corporation		
2005 Consolidated Form 1099		
100 Wall Street, 24th floor		
New York, NY 10005		
TD WATERHOUSE		
Monroe F Marsh		
51 Lakefront		
Irvine, CA 92604-4682		

Corrected 04/07/06 Notice	
2005 form 1099-INT: interest income (OMB No 1545-0112)	
*** No reportable 2005 form 1099-Int income ***	
2005 Form 1099-DIV dividends and distribution (OMB No 1545-0110)	
(box)	Amount
1a total ordinary dividends	\$23,455.93
1b qualified dividends	\$23,455.93
2a total capital gain distributions	\$865.28
2b unrecaptured section 1250 gain	0.00
2c section 1202 gain	0.00
2d collectibles (28%) gain	0.00
3 nondividend distributions	\$342.93
4 Federal income tax withheld	0.00
5 investment expenses	0.00
6 foreign tax paid	\$1,593.16
8 Cash liquid patient distributions	0.00
9 noncash liquidation distributions	0.00
2005 Form 1099-B:Proceeds Fro, Broker &	

Barter Exch. Trans. (OMB No 1545-0715)			
(Box 1A)	(Box 7)	(Box 1B)	(Box 2) (Box 4)
DATE	STOCKS	FEDERAL	
OF SALE	CUSIP	BONDS ETC	INC TAX
OR EXCH	NO.	WITHHELD	
107 ITEMS - TOTAL		\$1,382,720.11	0.00
2005 FORM 1099 MISC: MISCELLANEOUS			
INCOME (OMB NO 1545-0115)			
2. Royalties		\$10.48	