

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

Marsha Josiah,

Petitioner, Respondent

v.

Robin E. Jackson,

Respondent , Petitioner

ON APPEAL FROM THE CALIFORNIA
THIRD DISTRICT COURT OF APPEAL

PETITIONER, ROBIN E. JACKSON'S
APPENDIX VOLUME 1 of 1

Robin E. Jackson *Pro Se* litigant
2220 65th Avenue
Sacramento, California 95822

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Court of Appeal, Third Appellate District - No. C089963

S265656

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MARSHA JOSIAH, as Trustee, etc., Plaintiff and Respondent,

v.

ROBIN E. JACKSON, Defendant and Appellant.

SUPREME COURT
FILED

The petition for review is denied.

DEC 30 2020

Jorge Navarrete Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

Filed 10/21/20 Josiah v. Jackson CA3

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
THIRD APPELLATE DISTRICT
(Sacramento)**

MARSHA JOSIAH, as Trustee, etc.,
Plaintiff and Respondent,

v.

ROBIN E. JACKSON,
Defendant and Appellant.

C089963

**(Super. Ct. No.
34-2017-00219410)**

Robin E. Jackson (Jackson) appeals from an order removing her as a successor cotrustee of the Eddie Copeland Neighbors Trust (Trust) and surcharging her beneficial interest in the estate because she breached her fiduciary duties by using trust-owned property as a personal asset. We conclude that the record on appeal and Jackson's briefing are inadequate to permit review. We therefore are compelled to rely on the presumption of correctness and affirm the judgment.

BACKGROUND LAW

The Probate Code sets forth the duties of a trustee in administering a trust.¹ (§ 16000 et seq.; *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 888.) Those duties include, among others, (1) a duty of loyalty; (2) a duty of impartiality; (3) a duty to avoid conflicts of interest; (4) a duty to preserve trust property and make it productive; (5) a duty to exercise reasonable care, skill, and prudence in administering the trust; and (6) a duty to keep the beneficiaries of the trust reasonably informed of the administration of the trust. (§§ 16000-16015, 16040, subd. (a), 16060; *Uzyel, supra*, at p. 888.) A trustee also has a duty to administer the trust diligently and in good faith in accordance with the terms of the trust and applicable law. (Rest.3d Trusts, § 76; § 16000; *O’Neal v. Stanislaus County Employees’ Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1209; *Uzyel*, at p. 888.) A trustee’s violation of any duty owed to the beneficiaries is a breach of trust. (§ 16400.)

When a trustee commits a breach of the trust, the trustee is chargeable with any loss or depreciation in value of the estate resulting from the breach, any profit made by the trustee through the breach, and any profits that would have accrued to the estate but for the breach. (§ 16440; *Williamson v. Brooks* (2017) 7 Cal.App.5th 1294, 1301.) A broad range of remedies is available to address a trustee’s actual or threatened breach of trust. (*Estate of Giralдин* (2012) 55 Cal.4th 1058, 1068.) Those remedies include compelling the trustee to perform its duties, enjoining the trustee from breaching the trust, setting aside the trustee’s acts, reducing or denying the trustee’s compensation, removing the trustee, and “compel[ing] the trustee to redress a breach of trust by payment of money or otherwise.” (§§ 15642, 16420, 17200.) The reference to “ ‘payment of money’ ” is comprehensive and includes liability that might be characterized as a surcharge to be satisfied from the trustee’s distributive share of the estate. (*Estate of*

¹ Undesignated statutory references are to the Probate Code.

Giraldin, supra, 55 Cal.4th at p. 1068; *Chatard v. Oveross* (2009) 179 Cal.App.4th 1098, 1105-1106, 1114; see also § 1300.)

A trial court has wide discretion to select the appropriate remedy for a trustee's breach of duty. (§§ 16440, subd. (b), 16442, 17206; *Estate of Gump* (1991) 1 Cal.App.4th 582, 610; see also *Estate of Gilmaker* (1962) 57 Cal.2d 627, 633 [removal is discretionary].) We defer to a trial court's factual findings so long as they are supported by substantial evidence, and determine whether, under those facts, the court abused its discretion. (*Estate of Bonaccorsi* (1999) 69 Cal.App.4th 462, 471-472 [surcharge order reviewed for abuse of discretion]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 991 [factual findings reviewed for substantial evidence]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957 [discussing abuse of discretion standard].)

FACTUAL AND PROCEDURAL BACKGROUND

In January 2009, Eddie Copeland Neighbors (the Settlor) created the Trust for the benefit of her two daughters, Jackson and Marsha Josiah (Josiah), who were to share equally in her estate. The principal asset of the Trust was the Settlor's residential home in Sacramento (the home), which was transferred to the Trust.

In July 2010, around the time that the Settlor was placed in a long-term care facility, Jackson and her husband began living in the home.

In June 2015, the Settlor passed away and Jackson and Josiah became the successor cotrustees of the Trust. Shortly thereafter, in August 2015, Jackson recorded a grant deed transferring title of the home from the Trust to herself and her husband.

In September 2017, Josiah filed a petition alleging that Jackson engaged in self-dealing and breached her fiduciary duties by transferring title to the home and by residing in it without paying rent to the Trust. Josiah sought, among other relief, an accounting of the Trust's assets, an order removing Jackson as a successor cotrustee, an order requiring that the home's title be returned to the Trust, an order requiring Jackson and her husband

to pay rent for the period during which they resided in the home after the Settlor's death, and an order allowing Josiah to sell the home. Jackson opposed the petition.

Trial on the petition commenced November 29, 2018. Josiah was represented by legal counsel and Jackson appeared in propria persona. After hearing testimony from Jackson, Josiah, and an appraiser called to address the fair rental value of the home, the court found the home to be a Trust asset. The court rejected Jackson's claim that there was an agreement to allow Jackson to transfer title of the home from the Trust to Jackson and her husband. The court ordered that title be returned to the Trust, and continued the remainder of the trial to March 22, 2019. The court advised the parties that the remainder of the trial would focus on settling the Trust's accounts and the propriety of a surcharge order for Jackson's breach of duty to the Trust. The court ordered the parties to meet and confer in advance of a status conference set for February 19, 2019.

At the February 19 status conference, which was not reported, the court determined that Jackson was unwilling to cooperate in relation to the appraisal of the home or the correction to the home's title. The court ordered that Jackson be suspended as a cotrustee, that the home immediately be retitled in the name of the Trust, and that an appraisal of the home be completed by March 12, 2019. When Jackson refused to sign a grant deed transferring title back to the Trust, the court granted an ex parte application authorizing the clerk to sign the deed as an elisor.

On March 22, 2019, trial resumed with the court focusing on the appraised value of the home, the fair rental value of the home during Jackson's occupancy, and any credits to which Jackson might be entitled for paying the home's mortgage, taxes, or other expenses benefitting the Trust. Josiah presented documentary evidence regarding the appraised and fair rental values of the home.

The court found that Jackson failed to present any evidence to support her claims that she paid expenses benefitting the Trust. However, the court agreed to give Jackson a

limited amount of additional time to submit documentary evidence. Jackson timely filed a responsive declaration.²

On April 22, 2019, the court issued a tentative ruling, to which objections were filed. The court heard additional argument related to the objections on June 7, 2019. The court then entered a final order on June 25, 2019. The court's order provides that (1) the home is an asset of the Trust; (2) Jackson owes \$79,650 for the fair rental value of the home for the period from July 1, 2015, through March 31, 2019; (3) Jackson is entitled to a credit (offset) of \$73,921.43 toward the fair rental value for mortgage payments, taxes, and other expenses she paid with her personal funds; and (4) as long as Jackson continues to occupy the home, fair market rent (less any offsetting credits) shall continue to accrue.³ The court ordered Jackson removed as a successor cotrustee, but denied Josiah's request to require Jackson to vacate the home so that it could be sold. Jackson filed a notice of appeal on June 28, 2019.

DISCUSSION

On appeal, Jackson challenges the trial court's implied finding that she breached her fiduciary duties and engaged in self-dealing by transferring title of the home from the Trust to herself (and her husband) and occupying the home for several years without paying rent to the Trust. Although Jackson's brief is difficult to follow, the gravamen of her claim appears to be that the evidence does not support a finding that her conduct

² The 23rd Declaration is not included in the record on appeal. Although Jackson complains that many documents listed in the docket were not included in the record on appeal, it appears the documents are missing because she omitted them from her notice designating the record on appeal.

³ Jackson characterizes the court's order as holding her liable for personal damages to Josiah, but we construe the order as imposing a surcharge on Jackson for the harm she caused to the Trust itself. (See *Williamson v. Brooks*, *supra*, 7 Cal.App.5th at p. 1301; *Chatard v. Oveross*, *supra*, 179 Cal.App.4th at p. 1106.)

The record also omits most of the opposing party's pleadings and declarations, such as Josiah's objection to the court's tentative decision.⁴

As we recognized in *Osgood v. Landon*, *supra*, 127 Cal.App.4th 425, “ ‘a record is inadequate . . . if the appellant predicates error only on the part of the record he [or she] provides the trial court, but ignores or does not present . . . portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed.’ ” (*Id.* at p. 435, quoting *Uniroyal Chemical Co. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302; *Estate of Fain*, *supra*, 75 Cal.App.4th at p. 992.) Without an adequate record to overcome the presumption that the court's ruling was correct, we must affirm.

In addition to Jackson's failure to provide an adequate record, her briefing also is woefully deficient. To demonstrate error, “ ‘an appellant must do more than assert error and leave it to the appellate court to search the record and the law books to test his [or her] claim.’ ” (*Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 204.) “ ‘It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness.’ [Citation.]” (*Ibid.*) An appellant must demonstrate error by presenting reasoned argument along with specific citations to the record and supporting legal authority. (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) “When a point is asserted without argument and authority for the proposition, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’ [Citations.]” (*Ibid.*)

⁴ On our own motion, we take judicial notice of the trial court's online register of actions, available at <<https://services.saccourt.ca.gov/PublicCaseAccess/Probate>> [as of Oct. 21, 2020], archived at <<https://perma.cc/57RB-9NQ9>>. (Evid. Code, §§ 452, subd. (d), 459.)

breached any fiduciary duties or caused any personal damages to Josiah. We conclude that Jackson has forfeited her claims by filing an inadequate brief and record.

I

Inadequacy of the Record and Appellant's Brief

“ ‘A judgment or order of the [trial] court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent’ . . . [Citation.]’ [Citation.]” (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435, italics omitted.) We will not reverse a judgment or order unless the appellant affirmatively demonstrates error by an adequate record. (*Ibid.*) “ ‘A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.’ [Citations.]” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416; *Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.)

The record here is plainly inadequate as it does not include a complete record of the evidence presented at trial. Although we have a reporter's transcript for the first day of trial, Jackson has not provided a reporter's transcript or any adequate substitute for the second day of trial. As a result, we do not know what evidence was received and considered by the court on the second day of trial, including whatever “documentary evidence” was presented by Josiah.

Also missing from the record is documentary evidence on which the trial court explicitly relied in reaching its decision. In its decision, the trial court described Jackson's “23rd Declaration” as the basis for its calculation of the credit given to Jackson for paying expenses on behalf of the Trust. But Jackson's 23rd Declaration is not part of the record on appeal. Thus, we are prevented from reviewing the court's calculations of the offset.

Under the California Rules of Court, appellate briefs are required to state each point under a separate heading or subheading, which summarizes the point. (Cal. Rules of Court, rule 8.204(a)(1)(B).) Where an appellate brief fails to include proper headings, the contentions need not be considered. (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1346.)

When a finding of fact is attacked on the ground that there is insufficient evidence to sustain it, the appellant is required to set forth in the brief all of the material evidence on the point and not merely the evidence favorable to the appellant. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951.) Unless this is done, the error is deemed to be forfeited. (*Ibid.*)

Jackson has failed to comply with these rules in her appellate brief.⁵ Her brief makes numerous assertions of law and fact that are not supported by citations to any authority or facts in the record.

Where Jackson cites legal principles, she generally fails to explain how they apply to the facts of this case. For example, she repeatedly refers to the due process clause in her statement of facts, but never discusses it in the argument portion of her brief. Similarly, she cites section 16060, but does not explain how that statute relates to the trial court's decision in this case.

Her brief refers to laches and the statute of limitations, but she did not include either defense in her argument headings, and her discussion of them is conclusory, disjointed, and devoid of meaningful legal analysis. She also makes no attempt to show that the laches defense was raised in the trial court.⁶ (*Kaufman & Broad Communities,*

⁵ Jackson did not file a reply brief.

⁶ Unlike the laches defense, Jackson cites to pages in the record where she allegedly raised a statute of limitations defense (albeit under § 16061.7 rather than § 16061.8). But

Inc. v. Performance Plastering, Inc. (2006) 136 Cal.App.4th 212, 226 [failure to raise claim in trial court forfeits it on appeal]; *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 52-53 [laches cannot be raised for first time on appeal].)

Jackson challenges the sufficiency of the evidence to support a finding that she breached her fiduciary duties, but she fails to provide a fair summary of the material evidence bearing on that issue, discussing only evidence that is favorable to her position and virtually ignoring the evidence to the contrary, such as Josiah's contradictory trial testimony.

We are mindful that Jackson appears in this court without counsel, but that does not exempt her from the rules governing appeals. The law affords self-represented litigants “ ‘the same, but no greater consideration than other litigants and attorneys.’ ” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247; *Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570, 574.)

Given the deficiencies of Jackson's brief and the inadequacies of the appellate record, we are compelled to conclude that Jackson has forfeited whatever contentions she was attempting to assert on appeal.

even if Jackson preserved that claim for appeal by briefly referring to it in one of her declarations, we fail to see how the cited statute has any application to this case, which involved a petition to enforce the Trust, not to contest or revoke it. (*Yeh v. Tai* (2017) 18 Cal.App.5th 953, 967; see also § 21310, subd. (b)(5).)

DISPOSITION

The trial court's order is affirmed. Each party shall bear its own costs on appeal.
(Cal. Rules of Court, rule 8.278(a)(5).)

KRAUSE, J.

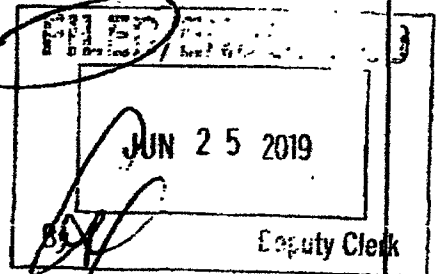
We concur:

BLEASE, Acting P. J.

HOCH, J.

1 COURT PREPARED

12a



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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO
10

11 In Re the Matter of

12
13 Eddie Copeland Neighbors Trust,

ORDER AFTER TRIAL

14 dated January 21, 2009.

Case No. 34-2017-219410
15
16

17 The matter went to trial in regard to one essential issue: the disposition of a home
18 located at 2220 65th Avenue in Sacramento. The matter was tried over two days:
19 November 29, 2018 and March 22, 2019. Day one of the trial focused on title to the
20 home and the second day focused on the proper disposition of the property. The trial
21 originally was also designed to encompass a review of trust accountings, but Petitioner
22 agreed to waive any objections to all accountings prepared prior to trial.
23

24 Day One: November 29, 2018

25 In January of 2009, Eddie Copeland Neighbors (Settlor) created a trust where she
26 left her estate to her two daughters, Robin Jackson (Respondent) and Marsha Josiah
27 (Petitioner) in equal shares. The Settlor transferred her home located at 2220 65th
28 Avenue to her trust. The settlor passed away on June 11, 2015 and the two daughters
became co-trustees per the terms of the trust. Prior to the Settlor's death, Respondent

1 began living in the home with her husband, Demetri Jackson. Respondent and her
2 husband continue to reside in the home. According to an accounting filed by Respondent
3 on August 2, 2018, it appears that Settlor moved out of the home to Sunrise Assisted
4 Living in September of 2010.

5 On August 3, 2015, Respondent recorded a deed purporting to transfer the home to
6 "Robin Jackson and Demetri Jackson as his/her sole and separate property". Based upon
7 the testimony presented at trial, it was abundantly clear that Petitioner never made any
8 oral or written representation that she was giving up her interest in the 65th Avenue home
9 to her sister. The Court found the Petitioner's testimony to be clear, concise, articulate
10 and forthcoming. From observing Petitioner, it became quite apparent that she took no
11 joy whatsoever in bringing a family disagreement into a public forum. On the other
12 hand, it was considerably more difficult to track the testimony of the Respondent.

13 Based upon the Court's assessment of the credibility of the witnesses and a review
14 of the exhibits presented, the Court found the home to be a trust asset. The second day of
15 trial was set for March 22, 2019 and the Court recommended that the parties meet and
16 confer prior to March 22nd. In addition, the Court ordered that the home be appraised
17 and retitled as a trust asset. The Court further advised that day two would focus on the
18 fair rental value of the home, mortgage payments and other costs in order to come up
19 with the respective dollar interests of the daughters based upon the appraisal. The Court
20 indicated that it intended to compare the fair rental value of the home with the expenses
21 for the home from the date of the Settlor's death until upcoming March trial date. In
22 addition, the Court set a status conference on February 19, 2019 in order to confirm that
23 the home had been properly retitled and the appraisal was completed.

24 At the February 19th hearing, it was immediately clear that Respondent was
25 unwilling to cooperate in relation to the appraisal or the correction to the deed. As a
26 result, Respondent was suspended as co-trustee. The Court ordered that the home be
27 immediately retitled and that the property be appraised by the expert who testified on
28 November 22, 2018.

1 Day Two: March 22, 2019

2 Prior to taking testimony, the Court ruled on Respondent's motion for
3 reconsideration and motion to vacate and enter a different order. The Court found that
4 both motions were untimely and lacked substantive merit. At this point, Respondent had
5 filed 22 separate declarations in relation to either the disposition of the home or the trust
6 accountings.

7 Petitioner then presented documentary evidence regarding the appraised and fair
8 rental values of the home. Based upon the evidence presented, the home is presently
9 valued at \$305,000 and the present fair rental value is \$1,850 per month. Respondent did
10 not present any records on Day Two. She testified that the present monthly mortgage is
11 around \$1,000 per month, but failed to present any supporting documentation in regard to
12 the mortgage, taxes, and repairs to the home. The Court agreed to take the matter under
13 submission and provide Respondent the opportunity to submit relevant documents as
14 long as those documents were submitted by 4:00 pm on March 25, 2019.

15 Respondent's 23rd Declaration was timely filed and provides the basis for the
16 Court's calculation of the expenses incurred for the 65th Avenue home.

17
18 Tentative Decision

19
20 The Court issued a tentative decision on April 22, 2019. Based upon Objections
21 filed by the Petitioner and a Request for Statement of Decision from Respondent, the
22 Court heard additional argument on June 7, 2019. After consideration of the entire
23 record, the Court makes the following findings:

24
25 Findings

26 The fair market value of the home is \$305,000 (Trial Exhibit 6).

27 The fair rental value (FRV) of the property for the 45 month period from July 1,
28 2015 through March 31, 2019 is \$79,650 (Exhibit 5).

1 The FRV is based upon the following monthly rates (June 2015 – June 2016 =
2 \$1,650 per month) (July 2016 – June 2017 = \$1,750 per month) (July 2017 – present =
3 \$1,850 per month) (Exhibit 5).

4 The mortgage payments made for this same 45 month period totaled approximately
5 \$45,000. Respondent testified that the mortgage payment averaged \$1000 per month.

6 The property tax payments for the time period totaled \$18,019.48 (23rd
7 Declaration).

8 The Super Shooter home repair bill was \$3,500. Respondent's claim for credit
9 towards this bill is denied since there was no proof the bill was paid (23rd Declaration).

10 The Clark's Pest Control bill was \$6,455. Respondent's claim for credit towards
11 this bill is approved since the documents suggest that the bill was paid (23rd Declaration).

12 The (2) receipts for landscaping work totaled \$360. Respondent is entitled to this
13 credit (23rd Declaration).

14 In addition, Respondent provided documentation that she paid \$4,086.95 for the
15 Settlor's funeral service (23rd Declaration). Respondent is entitled to this credit.

16 As noted in the tentative decision, Respondent is not entitled to the \$30,000 in
17 repairs administered through the Ygrene Energy Fund since this cost was included in the
18 property tax bills (23rd Declaration).

19 Respondent's credit for the payments based on the 23rd Declaration is \$28,921.43.
20 Including the mortgage payments, Respondent's total credit is \$73,921.43.

21 Respondent provided no factual or legal support for her other claims for credits.

22 Respondent was unable to provide authority how her homestead exemption claim
23 would apply to this particular trust asset.

24 While Respondent continues to occupy the residence, the fair rental and credit
25 assessments continue to accrue which means that Respondent's net monthly obligation is
26

1 presently \$850.

2 Petitioner has requested that Respondent and her husband Demetri Jackson vacate
3 the residence. This is a matter that must be pursued in a different forum. Petitioner cited
4 Probate Code section 850(a)(3)(A) as the statutory authority for this request. This statute
5 and reported authority construing Probate Code section 850(a)(3)(A) do not support this
6 contention.

7 The Court has not made a ruling on Petitioner's request for attorney's fees and
8 costs since no memorandum of costs or motion for attorney's fees has been submitted.
9 Based upon the evidence presented at trial, Respondent's ability to pay fees and costs will
10 surely be a significant factor in any award of fees and costs.
11

12
13 Orders

14 The request for a statement of decision is denied as untimely since the matter was
15 tried in less than eight hours and the request was not made before the matter was
16 submitted. (California Rule of Court section 3.1590(n)). The trial lasted under four
17 hours over two days.

18 Respondent Robin Jackson is removed as Co-Successor Trustee of the Eddie
19 Copeland Neighbors Trust.

20 The home located at 2220 65th Avenue in Sacramento is a trust asset.
21 Respondent's owes \$79,650 for the fair rental value of the home for the period of July 1,
22 2015 to March 31, 2019.

23 Respondent is entitled to a \$73,921.43 credit toward the \$79,650 fair rental value.

24 Respondent's other claims for credits and exemptions are denied.

25 While Respondent occupies the home, rent costs and credit toward the rent costs
26 continue to accrue.
27

28 The request to remove Respondent and Demetri Jackson from the home is denied.

1 Petitioner's request for attorney fees and costs is deferred.

2 The parties are encouraged to explore a sale of the home to a third party or an
3 arrangement where one party buys out the interest of the other party. Since Respondent
4 presently occupies the residence, the home will not be ordered sold at this point.

5 The matter is now deemed to be final.

6
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8 Dated: June 25, 2019.


9 JOHN P. WINN,
10 Judge of the Superior Court
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