

Case No. 21-1582

Supreme Court of the United States

Jack R. Finnegan
Petitioner

v.

RICHARD A. MARSHACK and HONORABLE
JACKI C. BROWN
Respondents

On Petition for Writ of Mandamus

Superior Court of California Case No. S271232,
Court of Appeal, CA, Fourth Appellate District,
Division Three Case No. G058635
Trial Court Case No. 30-2019-01047364-PR-CE-CJC

**APPENDIX IN SUPPORT OF RESPONDENT'S
OPPOSITION TO PETITION FOR WRIT OF
MANDAMUS**

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Attorneys for Respondent
RICHARD A. MARSHACK, in his capacity as the
Chapter 7 Trustee of
the Bankruptcy Estate of Jack Richard Finnegan

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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 162507 NAME: D. Edward Hays FIRM NAME: MARSHACK HAYS LLP STREET ADDRESS: 870 Roosevelt CITY: Irvine STATE: CA ZIP CODE: 92602 TELEPHONE NO.: (949) 333-7777 FAX NO.: (949) 333-7778 E-MAIL ADDRESS: ehays@marshackhays.com ATTORNEY FOR (name): Petitioner/Ch. 7 Trustee, RICHARD A. MARSHACK		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER JAN 15 2020 DAVID H. YAMASAKI, Clerk of the Court ELECTRONICALLY RECEIVED By: J. HAYES, Deputy Clerk 12/06/2019 at 12:58:02 PM Clerk of the Superior Court By eClerk, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center		
CONSERVATORSHIP OF (name): JACK RICHARD FINNEGAN CONSERVATEE		
ORDER APPOINTING <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship		CASE NUMBER: 30-2019-01047364-PR-CE-CJC
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.		

1. The petition for appointment of ☐ successor conservator came on for hearing as follows (check boxes c, d, e, and f or g to indicate personal presence):
- a. Judicial officer (name): Honorable Jack C. Brown
- b. Hearing date: 12/05/2019 Time: 11:00 A.M. ☒ Dept.: C06 ☐ Room:
- c. ☒ Petitioner (name): RICHARD A. MARSHACK
- d. ☒ Attorney for petitioner (name): D. EDWARD HAYS
- e. ☐ Attorney for ☐ person cited ☐ the conservatee on petition to appoint successor conservator:
 (Name):
 (Address):
 (Telephone):
- f. ☒ Person cited was ☐ present. ☐ unable to attend. ☒ able but unwilling to attend. ☐ out of state.
- g. ☒ The conservatee on petition to appoint successor conservator was ☐ present. ☒ not present.
- THE COURT FINDS
2. All notices required by law have been given.
3. Granting the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
4. (Name): JACK RICHARD FINNEGAN
- a. ☐ is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.
- b. ☒ is substantially unable to manage his or her financial resources or to resist fraud or undue influence.
- c. ☐ has voluntarily requested appointment of a conservator and good cause has been shown for the appointment.
5. The conservatee
- a. ☒ is an adult.
- b. ☐ will be an adult on the effective date of this order.
- c. ☐ is a married minor.
- d. ☐ is a minor whose marriage has been dissolved.
6. ☐ There is no form of medical treatment for which the conservatee has the capacity to give an informed consent.
☐ The conservatee is an adherent of a religion defined in Probate Code section 2355(b).
7. ☒ Granting the ☐ successor conservator powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and in the best interest of the conservatorship estate.
8. ☐ The conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

Do NOT use this form for a temporary conservatorship.

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CONSERVATORSHIP OF (name):	JACK RICHARD FINNEGAN CONSERVATEE	CASE NUMBER: 30-2019-01047364-PR-CE-CJC
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9. ☐ The conservatee has dementia as defined in Probate Code section 2356.5, and the court finds all other facts required to make the orders specified in item 28.
10. ☐ Attorney (name): _____ has been appointed by the court as legal counsel to represent the conservatee in these proceedings. The cost for representation is: \$
The conservatee has the ability to pay ☐ all ☐ none ☐ a portion of this sum (specify): \$
11. ☐ The conservatee need not attend the hearing.
12. ☐ The appointed court investigator is (name): _____
(Address and telephone): _____
13. ☐ (For limited conservatorship only) The limited conservatee is developmentally disabled as defined in Probate Code section 1420.
14. ☒ The ☐ successor conservator is a professional fiduciary as defined by Business and Professions Code section 6501(f).
15. ☒ The ☐ successor conservator holds a valid, unexpired, unsuspended license as a professional fiduciary issued by the Professional Fiduciaries Bureau of the California Department of Consumer Affairs under chapter 6 (commencing with section 6500) of division 3 of the Business and Professions Code.
License no.: 268 Issuance or last renewal date: 12/15/2008 (Issued) Expiration date: 03/31/2020
16. (Either a, b, or c must be checked):
a. ☒ The ☐ successor conservator is not the spouse of the conservatee.
b. ☐ The ☐ successor conservator is the spouse of the conservatee and is not a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
c. ☐ The ☐ successor conservator is the spouse of the conservatee and is a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
It is in the best interest of the conservatee to appoint the spouse as ☐ successor conservator.
17. (Either a, b, or c must be checked):
a. ☒ The ☐ successor conservator is not the domestic partner or former domestic partner of the conservatee.
b. ☐ The ☐ successor conservator is the domestic partner of the conservatee and has neither terminated nor intends to terminate their domestic partnership.
c. ☐ The ☐ successor conservator is the domestic partner or former domestic partner of the conservatee and intends to terminate or has terminated their domestic partnership. It is in the best interest of the conservatee to appoint the domestic partner or former domestic partner as ☐ successor conservator.
- THE COURT ORDERS
18. a. (Name): _____ (Telephone): _____
(Address): _____
- Is appointed ☐ successor ☐ conservator ☐ limited conservator of the PERSON of (name): _____
and Letters of Conservatorship shall issue upon qualification. (Telephone): (949) 800-8625
- b. (Name): PETER KOTE
(Address): 24361 El Toro Road, Suite 260, Laguna Woods, CA 92673
- is appointed ☐ successor ☒ conservator ☐ limited conservator of the ESTATE of (name): _____
Jack Richard Finnegan and Letters of Conservatorship shall issue upon qualification.
19. ☐ The conservatee need not attend the hearing.
20. a. ☐ Bond is not required.
b. ☒ Bond is fixed at: \$20,000.00 to be furnished by an authorized surety company or as otherwise provided by law.
c. ☐ Deposits of: \$ are ordered to be placed in a blocked account at (specify institution and location): _____

and receipts shall be filed. No withdrawals shall be made without a court order.
☐ Additional orders in attachment 20c.

CONSERVATORSHIP OF (name):	JACK RICHARD FINNEGAN CONSERVATEE	CASE NUMBER: 30-2019-01047364-PR-CE-CJC
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20. (cont.)
 d. ☐ The ☐ successor conservator is not authorized to take possession of money or any other property without a specific court order.
21. ☐ For legal services rendered, ☐ conservatee ☐ conservatee's estate shall pay the sum of: \$
 to (name): ☐ forthwith ☐ as follows (specify terms, including any combination of payors):
- ☐ Continued in attachment 21.
22. ☐ The conservatee is disqualified from voting.
23. ☐ The conservatee lacks the capacity to give informed consent for medical treatment and the ☐ successor conservator of the person is granted the powers specified in Probate Code section 2355.
☐ The treatment shall be performed by an accredited practitioner of a religion as defined in Probate Code section 2355(b).
24. ☒ The ☐ successor conservator of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in attachment 24 ☒ subject to the conditions provided.
25. ☐ Orders relating to the capacity of the conservatee under Probate Code sections 1873 or 1901 as specified in attachment 25 are granted.
26. ☐ Orders relating to the powers and duties of the ☐ successor conservator of the person under Probate Code sections 2351–2358 as specified in attachment 26 are granted. (Do not include orders under Probate Code section 2356.5 relating to dementia.)
27. ☐ Orders relating to the conditions imposed under Probate Code section 2402 on the ☐ successor conservator of the estate as specified in attachment 27 are granted.
28. ☐ a. ☐ The ☐ successor conservator of the person is granted authority to place the conservatee in a care or nursing facility described in Probate Code section 2356.5(b).
 b. ☐ The ☐ successor conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).
29. ☒ Other orders as specified in attachment 29 are granted.
30. ☐ The probate referee appointed is (name and address):
31. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the person under Probate Code section 2351.5 as specified in attachment 31 are granted.
32. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the estate under Probate Code section 1830(b) as specified in attachment 32 are granted.
33. ☐ (For limited conservatorship only) Orders limiting the civil and legal rights of the limited conservatee as specified in attachment 33 are granted.
34. ☒ This order is effective on the ☒ date signed ☐ date minor attains majority (specify):
35. Number of boxes checked in items 18–34: 7
36. Number of pages attached: 4
- Date:

JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

ATTACHMENT 24

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ATTACHMENT 24 – GC340

ORDERS:

1. The proposed conservatee's one known significant valuable asset is the Property. If no other assets are discovered and if no other funding can be obtained to pay creditors, the bankruptcy trustee may need to sell the Property to pay Conservatee's debts including those provided by federal or state law including Probate Code § 2430. Upon being served with notice or becoming aware of any potential sale of the Property, the Conservator shall file an ex parte application and seek court approval to oppose, consent, or take no position regarding any such sale.
2. The Conservator shall have authority to pledge the Property as collateral for any loan obtained to provide funding necessary to pay Conservatee's creditor claims as allowed by the United States Bankruptcy Court.
3. The Conservator has the power to exchange property of the estate for the purposes of reaching a settlement with potential creditors.
4. To minimize administrative expenses and delays associated with bankruptcy litigation, the Conservator shall have the power to compromise, pay, and settle claims against the Conservatee's bankruptcy estate without further order of this Court on condition that any such compromise, payment, or settlement is approved by order of the United States Bankruptcy Court.

ATTACHMENT 29

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ATTACHMENT 29 – GC340

Pursuant to the Court's ruling after trial:

ORDERS:

1. Unless otherwise authorized by this Court pursuant to an express written order, JACK RICHARD FINNEGAN ("Conservatee"), lacks the capacity to commence or continue any litigation, lawsuit, or other legal proceeding including, but not limited to, filing any pleading or notice of appeal in any federal or state court. Instead, any such pleadings, lawsuits, or appeals may only be filed by Conservator, PETER KOTE;
2. Conservator has authority to substitute into any pending action in which Conservatee is a party as the real party-in-interest. Conservator has full authority and discretion to file any pleadings he in his discretion deems necessary or advisable including a request or stipulation for dismissal of any such action;
3. Conservator has the power and authority to enter into or join in any settlement and release negotiated between Conservatee's bankruptcy trustee, RICHARD A. MARSHACK, and any of Conservatee's creditors. Any such settlement and release shall be effective and binding on Conservatee if approved by entry of an order of the United States Bankruptcy Court in Conservatee's pending bankruptcy Case No. 8:18-bk-10762-TA;
4. Conservator has authority to enter any financial agreements on behalf of Conservator including borrowing money secured by Conservatee's residence;
5. All notices or process regarding any litigation or pending actions that would otherwise be served on JACK RICHARD FINNEGAN must be served upon the Conservator, PETER KOTE;
6. In the event that the Conservator is served with notice or otherwise becomes aware of any possible sale of Conservatee's residence, Conservator shall file as soon as is reasonably practicable an ex parte application with the Court seeking an order authorizing him to support, oppose, or take no action regarding such sale; and
7. In the event Conservator, PETER KOTE, is unable to carry out his duties as a conservator, DR. EDWARD JAMES PALLOTTA, JR. is authorized to accept appointment as successor conservator of the Estate for Conservatee.

1/15/20
DATE

4827-3040-9646, v. 1

Jacki C. Brown
JUDGE JACKI C. BROWN
JACKI C. BROWN

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A-7

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 01/15/2020 TIME: 03:39:00 PM DEPT: C06
JUDICIAL OFFICER PRESIDING: Jacki C. Brown
CLERK: Jennifer Bustos
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01047364-PR-CE-CJC** CASE INIT.DATE: 01/16/2019
CASE TITLE: **Finnegan - Conservatorship**
CASE CATEGORY: Probate CASE TYPE: Conservatorship Of Estate Only

EVENT ID/DOCUMENT ID: 73208863
EVENT TYPE: Nunc Pro Tunc Minutes

APPEARANCES

There are no appearances by any party.

It appearing to the Court that through error or inadvertence, the minute order of this Court dated 12/05/2019, does not properly reflect the order of the Court. Said minute order is ordered corrected Nunc Pro Tunc as of 12/05/2019, as indicated below:

This matter came on for trial at 11:15 AM. Parties present as stated.

Court notes respondent Jack R. Finnegan is not present.

11:16 AM court is in recess for Clerk to phone respondent.

11:28 AM back on the record. Parties present as stated.

Clerk and counsel were unable to make contact with respondent but messages were left.

Court notes that respondent was present at the courthouse this morning at 9:00 AM and filed an objection and has voluntarily chosen not appear at the Trial.

Any request to consider a jury fee waiver by respondent is waived by his voluntary non-appearance.

Court to proceed as default prove-up action.

11:40 AM Counsel D. Edward Hays gives his opening statements.

At 12:03 Court is in recess.

Witnesses are ordered to return.

1:40 PM back on the record. All parties present as stated.

Court notes re: Jack Finnegan's failure to appear that Court was made aware by Clerk that respondent was here in courthouse at 9:00 a.m. but did not make an appearance in the courtroom for trial, nor telephone the Court as to a reason for his absence.

Court notes that respondent's objection filed 12/5/19 does not include a request for relief of jury fees.

Court grants counsel's request to admit petitioner's exhibits, as no objectors are present.

DATE: 01/15/2020
DEPT: C06

MINUTE ORDER

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Calendar No.

B-1

Petitioner's Exhibits are admitted into evidence unless stricken by the Court.

At 1:47 PM, Patrick Munoz is sworn and testifies.

Exhibit 10 is identified.

2:01 p.m. witness Patrick Munoz is permitted a recess to make pre-planned conference call outside of courtroom.

At 2:02 PM, Matthew Sincori is sworn and testifies, out of order.

Clerk J.Bustos relieves Clerk R. Veyna

Court inquires with witness at 2:10 PM.

At 2:11 PM, Matthew Sincori is excused.

At 2:12 PM, Richard Marshack is sworn and testifies.

Court declares a recess at 3:00 PM.

In open court at 3:17pm, all parties present.

Examination of witness continues.

Court inquired with witness at 3:20 PM.

Richard Marshack is excused.

Witness, Patrick Munoz, returns to the stand and resumes testimony.

Witness excused at 3:54 PM.

All exhibits admitted except exhibit #11.

Closing arguments waived.

Court rules as follows:

The Court having reviewed investigation memo and pleadings finds the conservatorship of the estate is the least restrictive alternative for the finances of Jack Richard Finnegan and the proposed Peter Kote is suitable and qualified for appointment.

Petition for Appointment of Probate Conservator filed by Richard A Marshack is granted.

Peter Kote appointed as Conservator of Estate Only of Jack Richard Finnegan.

Court grants PC 2590 powers. Any sale of real property is subject to court confirmation for sole purpose of informing/giving notice to the Court should the bankruptcy Court move to sell the property.

The Court orders that Peter Cote post bond in the amount of \$20,000.00.

The Court orders the Investigation Assessment Fee of \$650.00 paid.

Order not to be signed until proof of attendance at the Conservator Orientation Program is on file.

The Court sets a (P) Review Hearing for 04/07/2020 at 01:30 PM in Department C06.

Requires Order and Letters of appointment, notice of order appointing and conservatee's rights, declaration as to the level of care, inventory and appraisal and notice of inventory and appraisal to be filed.

Peter Kote, counsel Hays ordered to return unless required documents are on file and hearing is recommended off calendar.

The Court sets a (P) Accounting Review for 02/09/2021 at 01:30 PM in Department C06.

Court orders accounting due 2/9/21.

Requires accounting to be filed by that date.

CASE TITLE: Finnegan - Conservatorship

CASE NO: 30-2019-01047364-PR-CE-CJC

Peter Kote, counsel Hays ordered to return unless required documents are on file and hearing is recommended off calendar.

DATE: 01/15/2020
DEPT: C06

MINUTE ORDER

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PETER ANDERSON
UNITED STATES TRUSTEE
OFFICE OF THE UNITED STATES TRUSTEE
411 WEST FOURTH STREET, SUITE 7160
SANTA ANA, CALIFORNIA 92701
TEL: (714) 338-3400
FAX: (714) 338-3421

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

IN RE:

JACK RICHARD FINNEGAN,

Debtor.

CASE NO.: **8:18-bk-10762-TA**

CHAPTER 7

**NOTICE OF APPOINTMENT OF TRUSTEE AND
FIXING OF BOND; ACCEPTANCE OF
APPOINTMENT AS TRUSTEE**

PURSUANT TO 11 U.S.C. § 701 and 11 U.S.C. § 322

Richard Marshack
870 Roosevelt
Irvine, CA 92620

is appointed Interim Trustee in the above captioned matter and is hereby designated to preside at the meeting of creditors. This case is covered by the Chapter 7 blanket bond on file with the Court on behalf of the Trustees listed on Schedule A of the bond and any amendments or modifications thereto.

DATED: September 17, 2018

PETER ANDERSON
United States Trustee

I, the undersigned, affirm that to the best of my knowledge and belief, I am disinterested within the meaning of 11 U.S.C. § 101(14), and on this basis, I am hereby accept my appointment as Interim Trustee in the matter of *In Re: Jack R. Finnegan Debtor*, Case No. 8:18-bk-10762-TA, I will immediately notify the United States Trustee if I become aware of any facts to the contrary.

DATED: September 17, 2018

/s/ Richard A. Marshack
RICHARD MARSHACK
Interim Trustee

**U.S. Bankruptcy Appellate Panel
of the Ninth Circuit**

125 South Grand Avenue, Pasadena, California 91105
(626) 229-7220

TO: Clerk, Bankruptcy Court, Santa Ana, Central District of California

RE: JACK RICHARD FINNEGAN

CA No.: 19-60001

BAP No.: CC-18-1150-STaF

Bkcy Court No.: 8:18-bk-10762-TA

Adv No.: n/a

The judgment of this Panel entered on 12/21/2018 was appealed to the United States Court of Appeals for the Ninth Circuit.

Attached is a copy of the mandate of the Court of Appeals received on 11/14/2019.

The Court of Appeals **AFFIRMED** the BAP decision.

Susan M Spraul, BAP Clerk

By: Vicky Jackson-Walker, Deputy Clerk

Date: November 18, 2019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 14 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: JACK RICHARD FINNEGAN,
Debtor,

JACK RICHARD FINNEGAN,
Appellant,

v.

RICHARD A. MARSHACK; PETER C.
ANDERSON,
Appellees.

No. 19-60001

BAP No. 18-1150
BAP, Santa Ana Bankruptcy Court

MANDATE

The judgment of this Court, entered May 31, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Craig Westbrooke
Deputy Clerk
Ninth Circuit Rule 27-7

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 06/22/2020 TIME: 01:35:00 PM DEPT: C08

JUDICIAL OFFICER PRESIDING: Kim Hubbard

CLERK: Ruthie A Veyna

REPORTER/ERM: None



BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2019-01047364-PR-CE-CJC** CASE INIT.DATE: 01/16/2019

CASE TITLE: **Finnegan - Conservatorship**

CASE CATEGORY: Probate

CASE TYPE: Conservatorship Of Estate Only

EVENT ID/DOCUMENT ID: 73324169

EVENT TYPE: Ex Parte

MOVING PARTY: Richard A. Marshack

CAUSAL DOCUMENT/DATE FILED: Ex Parte Petition, 06/16/2020

APPEARANCES

There are no appearances by any party.

Ex-Parte application for order directing appointment of conservator and for confirmation of conservator's acts is requested by Richard A. Marshack.

The ex parte application for order directing appointment of conservator and for confirmation of conservator's acts requested by Richard A. Marshack is granted.

Court orders Clerk to give notice.

DATE: 06/22/2020
DEPT: C08

MINUTE ORDER

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E-1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Finnegan - Conservatorship	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: 30-2019-01047364-PR-CE-CJC



I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 06/22/20 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 6/22/20. Following standard court practice the mailing will occur at Sacramento, California on 6/23/20.

MARSHACK HAYS LLP
 870 ROOSEVELT AVENUE
 IRVINE, CA 92620

Clerk of the Court, by: Ruthie Vega, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

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

Conservatorship of the Estate of JACK
RICHARD FINNEGAN.

RICHARD A. MARSHACK, as Trustee
in Bankruptcy, etc.,

Petitioner and Respondent,

v.

JACK RICHARD FINNEGAN,

Objector and Appellant.

G058635

(Super. Ct. No. 30-2019-01047364)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jacki C.
Brown, Judge. Affirmed.

Jack Richard Finnegan, in pro. per., for Objector and Appellant.

Marshack Hays, D. Edward Hays and Laila Masud for Petitioner and
Respondent.

* * *

INTRODUCTION

Jack Richard Finnegan appeals from the order granting a petition for the appointment of a conservator of Finnegan's estate. The petition was filed by Richard A. Marshack, the appointed trustee in Finnegan's bankruptcy case. Finnegan refused to attend the trial on the petition. At trial on the petition, documentary evidence and the testimony of three witnesses, including Marshack, were admitted. More than substantial evidence supported the trial court's finding that Finnegan is substantially unable to manage his own financial resources within the meaning of Probate Code section 1801, subdivision (b).

Finnegan has asserted a litany of contentions in his appellate briefs. We conclude those contentions are without merit and Finnegan, who provided no record citations or relevant legal analysis in his appellate briefs, has failed to meet his burden of demonstrating error. We therefore affirm.

FACTS AND PROCEDURAL BACKGROUND¹

I.

SUMMARY OF FINNEGAN'S CONDUCT PRECEDING HIS FILING FOR BANKRUPTCY PROTECTION; MARSHACK IS APPOINTED TRUSTEE IN THE BANKRUPTCY ACTION.

In 2011, Finnegan owned real property on Manzanita Drive in Dana Point (the Manzanita property) on which he personally constructed two retaining walls without obtaining required permits. After Finnegan ignored at least eight notices of violation, stop work orders, and criminal citations, he was prosecuted and convicted of several criminal violations and placed on two years' informal probation. Finnegan was ordered to bring the property into compliance with the municipal codes by obtaining permits from

¹ Facts in this section are taken from testimony given at trial on the petition seeking the appointment of a conservator of Finnegan's estate and from a declaration filed by one of Marshack's attorneys in opposition to Finnegan's motion to dismiss that petition.

the city or removing the walls. After Finnegan disregarded that order, his probation was revoked and substantial monetary fines were assessed against him.

While Finnegan appealed his conviction, the trial court granted the City of Dana Point's petition to appoint a receiver to remedy the violations at the Manzanita property. Finnegan unsuccessfully appealed the appointment of the receiver. After the receiver acted to remedy the issues, he sold the Manzanita property to pay for the cost of repairs and for the costs of the receivership after Finnegan did not pay those costs. The proceeds from the sale of the Manzanita property were insufficient, however, to pay the total of the significant amount of costs and expenses that had been incurred in large part due to Finnegan's litigiousness and lack of cooperation.

Finnegan not only appealed from the order appointing the receiver, but also from the order terminating the receivership; he filed numerous motions in between his appeals. He sued Dana Point City Attorney Patrick Munoz and his associates, a Superior Court judge, and that judge's clerk in federal court, which the district court later dismissed; the Ninth Circuit Court of Appeals dismissed Finnegan's appeal from the dismissal. Finnegan filed a second federal lawsuit against another Superior Court judge and again against Munoz and one of his associates. The case was dismissed, and Finnegan's appeal was unsuccessful. The City of Dana Point incurred significant expenses in defending against Finnegan's actions.

In March 2018, Finnegan filed a voluntary petition for chapter 11 bankruptcy protection in the United States Bankruptcy Court (the bankruptcy action). Two months later, the Office of the United States Trustee appointed Marshack to serve as trustee in the bankruptcy action.

In June 2018, Finnegan filed a motion for disqualification of the bankruptcy judge presiding over his bankruptcy case and the matter was set for hearing. Finnegan did not appear at the hearing and his motion was denied in August 2018.

In June 2018, Finnegan had also filed a notice of appeal in an effort to challenge Marshack's appointment as trustee. Finnegan's appeal was dismissed as untimely. Finnegan's subsequent efforts to seek further review of the appointment order failed. Finnegan also "began to file pleadings in the District Court of the Central District of California," which proceedings the district court dismissed for lack of jurisdiction.

In August and September 2018, due to Finnegan's lack of cooperation with Marshack, Marshack successfully sought conversion of the bankruptcy case to a chapter 7 action; Marshack was appointed as chapter 7 trustee.

II.

FINNEGAN FAILS TO PARTICIPATE IN THE BANKRUPTCY ACTION AND THE BANKRUPTCY COURT GRANTS MARSHACK APPROVAL TO PETITION FOR THE APPOINTMENT OF A CONSERVATOR.

As chapter 7 trustee in the bankruptcy action, Marshack's duties include liquidating assets for the benefit of creditors, analyzing which assets in the estate could be monetized, evaluating claims filed in the bankruptcy action, and making distributions to creditors holding valid claims. Marshack reviewed Finnegan's bankruptcy schedules which showed Finnegan's primary, if not only, asset that could be administered by Marshack to generate money to pay creditors' claims was Finnegan's residence in San Clemente (the San Clemente residence). Finnegan valued the residence at \$5 million. Marshack's real estate agent valued it at \$1.9 million solely based on public records because Marshack could not gain access to the residence.

Marshack tried to contact Finnegan but was unable to confer with him at all. Although by statute, a debtor must attend the first meeting of creditors, Finnegan failed to appear at the first noticed meeting of creditors in October 2018, and thereafter failed to appear at any of the 21 subsequently scheduled meetings. Notwithstanding an order requiring him to appear for a Federal Rules of Bankruptcy, rule 2004 examination,

Finnegan did not appear for the examination and failed to appear at subsequently noticed exams.²

Throughout the course of the bankruptcy action, Finnegan filed “dozens of pleadings” in which he “consistently t[ook] positions which are unsupported by law or facts, citing unrelated statutes and cases in support of his conclusory statements of law.” Finnegan’s litigation tactics, which included seeking the disqualification of a sitting federal United States Bankruptcy Judge, writs of mandate to the bankruptcy court, and the removal of a sitting panel chapter 7 trustee, resulted in the bankruptcy estate incurring additional, otherwise unnecessary administrative expenses.

In September 2018, the bankruptcy court granted Marshack’s motion for an order authorizing the filing of a petition in the superior court to determine whether a conservator should be appointed for Finnegan’s estate.

III.

THE PETITION

In January 2019, Marshack filed a petition for the appointment of a conservator of Finnegan’s estate in the superior court (the petition). The petition alleged the appointment of a conservator was required because Finnegan was “substantially unable to manage his . . . financial resources or to resist fraud or undue influence” based on the following summary of supporting facts: “Conservatee filed bankruptcy. Petitioner is the court-appointed Chapter 7 Trustee. All of Mr. Finnegan’s assets are property of the

² Marshack testified that once after a hearing in the instant conservatorship case which Finnegan attended, Marshack tried “desperately to have a conversation” but Finnegan “wouldn’t have any part of it” and told Marshack, “You don’t have authority.” Marshack testified that a conservatorship would lend credibility and stability to settlement negotiations with creditors and provide the best hope of forestalling the removal of Finnegan from and the sale of the residence. Without a conservatorship, Marshack testified he would have no choice but to arrange for Finnegan to be removed from the San Clemente residence so it could be sold, which result would likely be disastrous for Finnegan because he would be left homeless and with insufficient funds for living expenses.

bankruptcy estate. Prior to and during the bankruptcy, Mr. Finnegan has filed numerous lawsuits and pleadings which are largely unintelligible and completely lack merit. Such pleadings have resulted in ever-increasing claims which will need to be paid in the bankruptcy case. The only potential asset of the estate may be Mr. Finnegan's residence. If necessary, petitioner will have to seek a bankruptcy court order compelling Mr. Finnegan to vacate and turn over possession of the residence so it can be sold. Due to his advanced age, petitioner would like to avoid such a result. Petitioner takes no position regarding whether Mr. Finnegan should be subject to a conservatorship because he has never met him as a result of conservatee's repeated failures to discharge his duties to meet with and cooperate with the bankruptcy trustee. Conservatee has also repeatedly violated bankruptcy court orders to appear for his sworn examination. Petitioner has a good faith belief that Mr. Finnegan should be evaluated for a potential conservatorship so that he will not be a financial danger to himself."

IV.

FOLLOWING A BENCH TRIAL, THE TRIAL COURT GRANTS THE PETITION.

Trial on the petition was scheduled for December 3, 2019. In his trial-setting conference statement, Finnegan requested a jury trial. By the morning of the scheduled trial date, however, Finnegan had not posted jury fees. The trial court explained to Finnegan that he waived the right to a jury trial because he failed to make any effort to timely pay the necessary jury fees. Finnegan did not request reconsideration of the trial court's ruling, state he was indigent, or make any statement about the timeliness of payment of jury fees.

The trial court ordered Finnegan to appear for trial to begin at 11:00 a.m. on December 5, 2019. Finnegan did not appear as ordered and could not be reached by the court clerk or by counsel. The trial court later confirmed that Finnegan had been present at the courthouse earlier that morning at 9:00 a.m. to file an objection to the denial of a

jury trial, and that he had voluntarily chosen not to appear for trial.³ The trial court explained that because Finnegan did not post jury fees, never requested a waiver of jury fees, and did not appear for trial as scheduled, he did not give the trial court the opportunity to consider a waiver of jury fees and the matter therefore would proceed by way of bench trial.

Marshack, Munoz, and an engineer who was involved in the Manzanita property litigation testified at trial. Extensive documentary evidence was authenticated by trial testimony and admitted into evidence.

The trial court thereafter granted the petition, stating: “I do find that your evidence, as presented, not only in the exhibits, but by the witnesses, the three witnesses that you have called, that by clear and convincing evidence, Mr. Jack Finnegan has [been] shown to be a person who is substantially unable to manage his own financial resources or resist fraud or undue influence. We do not have direct evidence of undue influence or even fraud perpetrated by another entity on him. But what we do have is total inability, as was pointed out, to face reality, to accept that these individuals in these positions of authority are actually real and to accept that there is a finite end to arguing against the world.

“This is—I will note that the evidence is not proved solely by an isolated incident of negligence or improvidence. What we show is almost ten years’ worth of Mr. Finnegan’s refusal to conduct himself rationally when it comes to legal responsibilities and financial decisions. As has been noted by several of the witnesses, he continues to present a physical . . . demeanor that looks reasonably normal.

“He is completely verbal. It is not that he has lost language or linguistic skills, which some people as they age do lose. But in his case, he is very articulate. He just does not make any sense.

³ In addition to filing an objection to the denial of a jury trial, Finnegan filed the notice of appeal triggering the instant appeal earlier in the morning before trial began.

“He submits written materials, which is shown by the multiple . . . lawsuits that he loses in every instance. He writes things that make no sense. He is correct that he has done volumes of research, because that’s how much effort would have been required just to accumulate all the lists of statutes that he cares to invoke. But that does not make him right.

“And moreover, the fact that he was given more and more opportunities to prevent the compound consequences of his bad decisions, and he refuses to see that they were bad decisions even when he has lost everything.

“I commend both the bankruptcy judge, as well as the trustee, to try and craft something to prevent making him a homeless person who will continue to fight against the world. As the probate investigator learned from [Finnegan’s] adult son, he apparently has taken the death of his wife extremely hard. And from—apparently from that point on, he has conducted his actions with the public and with positions of authority with the idea that there is a war, and he is going to outlast them.

“That is not a realistic, rationalistic position to take. More importantly, it is not evidence of substantial ability to manage one’s financial resources, and that’s proven by the fact that everything has gotten lost.

“I do find specifically that the incidents, as discussed by the witnesses, are multiple, consistent, without end. Each time one proceeding ended with a final judgment after appeal was denied, he files something else. And it will not end.

“Therefore, the court does find, by clear and convincing evidence, that the conservatorship of the estate is necessary, and there is no least restrictive alternative, other than conservatorship of the . . . estate, for the finances of Mr. Jack Finnegan.”

The trial court found the proposed conservator, Peter Kote, suitable and qualified to serve as conservator of Finnegan’s estate. The trial court added that “[a]ny sale of real property is subject to court confirmation for [the] sole purpose of

informing/giving notice to the court should the bankruptcy court move to sell the property.”

The following month, the trial court issued a formal signed ruling setting forth the scope of the conservatorship, including the order that, absent a contrary written order, Finnegan “lacks the capacity to commence or continue any litigation, lawsuit, or other legal proceeding including, but not limited to, filing any pleading or notice of appeal in any federal or state court. Instead, any such pleadings, lawsuits, or appeals may only be filed by Conservator, PETER KOTE.”

APPEALABILITY

As noted *ante*, Finnegan initiated this appeal by filing a notice of appeal the morning of trial on December 5, 2019.

This court ordered a stay on the preparation of the appellate record and invited the parties to submit supplemental briefing addressing the court’s concerns whether the appeal was taken from an appealable order: “Appellant’s notice of appeal filed on December 5, 2019 in this conservatorship proceeding does not identify the date of the order or judgment from which he appeals. Appellant’s civil case information statement states the appeal is from orders entered on June 5, 2019 and December 3, 2019. The June 5, 2019 order is an unsigned minute order denying appellant’s request to dismiss the conservatorship petition. Appellant has not attached a copy of the December 3, 2019 order. The court is considering dismissing the appeal because the orders do not appear to be appealable orders listed in Probate Code sections 1301 and 1301.5. (Code Civ. Proc., § 904.1, subd. (a)(10); see *Conservatorship of Rich* (1996) 46 Cal.App.4th 1233, 1235.)”

Following briefing, in a subsequent order dated June 29, 2020, this court stated: “After reviewing the documents filed here and judicially noticeable trial court documents, it appears appellant intended to appeal a December 5, 2019 order granting a

probate conservatorship over his estate (and certain other orders leading up to that order). The trial court subsequently entered a formal order granting the probate conservatorship on January 15, 2020. It does not appear that letters of conservatorship have actually issued in this case. [¶] *This appeal may proceed as one taken from the order granting of letters of conservatorship and the orders leading up to that appealable order.* (Prob. Code, § 1301, subd. (a).)” (Italics added.)

DISCUSSION

I.

PROBATE CODE SECTION 1801 AND THE STANDARD OF REVIEW

Probate Code section 1801, subdivision (b) provides in relevant part: “A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.” Subdivision (e) of Probate Code section 1801 provides that the standard of proof for the appointment of a conservator under this section is “clear and convincing evidence.”

A trial court’s decision to appoint a conservator is reviewed for substantial evidence. (*Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401.) “When reviewing a finding that a fact has been proved by clear and convincing evidence, the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true. In conducting its review, the court must view the record in the light most favorable to the prevailing party below and give appropriate deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1011-1012.)

II.

FINNEGAN HAS FAILED TO MEET HIS BURDEN OF PROVING ERROR.

In his appellate briefs, Finnegan does not argue the trial court's decision to appoint a conservator over his estate is supported by insufficient evidence⁴ or that the trial court applied an incorrect legal standard in reaching its decision. The record shows more than substantial evidence supported the trial court's finding that clear and convincing evidence of Finnegan's conduct showed he was a person who is substantially unable to manage his own financial resources within the meaning of Probate Code section 1801, subdivision (b).

Substantial evidence showed Finnegan persistently refused to cooperate with the City of Dana Point in resolving the unpermitted construction on the Manzanita property starting in 2011. He was ultimately convicted of several criminal counts and placed on informal probation. Probation was revoked when he refused to comply with the trial court's order requiring him to remedy the problems on the property, which resulted in significant fines. His recalcitrance led to the costs related to the appointment of a receiver and the ultimate sale of the Manzanita property to pay a portion of his outstanding expenses. Undaunted, Finnegan filed meritless lawsuits against city officials and superior court judges and staff in connection with the Manzanita property dispute, further incurring needless expenses. After he filed for bankruptcy protection and Marshack was appointed trustee, Finnegan was uncooperative and unresponsive. He refused to appear for required meetings and examinations. He rejected Marshack's

⁴ In his opening brief, Finnegan states "[t]here was no evidence submitted in the Official Record that the proposed conservatee was unable to provide properly for his personal needs, that the proposed conservatee was unable to substantially manage his own financial resources." It is unclear what Finnegan means by the Official Record. To the extent Finnegan intended by his statement to mount a substantial evidence challenge to the order, we conclude Finnegan waived any such challenge because he failed to summarize material evidence admitted at trial, much less cite or analyze such evidence in his appellate briefs.

authority as trustee and the legitimacy of the bankruptcy judge's jurisdiction over him. By continuing to incur significant expenses and being unwilling to cooperate in resolving creditors' claims, Finnegan obstructed Marshack's efforts to help Finnegan continue to live in the San Clemente residence with sufficient resources for living expenses.

Instead of analyzing the state of the trial evidence or the applicable legal standard, Finnegan's opening brief consists of a long list of various legal principles and random quotations from a host of legal authorities; it is bereft of citations to the record or relevant legal analysis. To meet the burden of affirmatively demonstrating error, an appellant must raise issues for review and support each issue raised with argument, legal authority, and citations to the record. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; *In re S.C.* (2006) 138 Cal.App.4th 396, 406.) If an appellant fails to raise an issue, or fails to adequately support an issue raised, the appellate court may deem the issue forfeited. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 964.)

Any reference to a matter in the record must be supported by a citation to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made." (*In re S.C.*, *supra*, 138 Cal.App.4th at p. 406.) "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)⁵ A self-represented litigant is held to the same rules as an attorney. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

⁵ Rule 8.204(a)(1)(B) of the California Rules of Court also requires that a brief "[s]tate each point under a separate heading or subheading summarizing the point, and support

Given the state of his appellate briefs, we conclude Finnegan has failed to carry his burden of demonstrating error. Even were we to assume Finnegan has not forfeited his arguments on appeal, his briefs do not show that the order granting the petition was erroneous.

Notwithstanding this court's order dated June 29, 2020 regarding the scope of the instant appeal as taken from the order granting the petition, Finnegan's opening brief begins: "The nature of the action is to compel obedience to the private rights of the Appellant's Constitutional rights, and the voiding of all actions of the Superior Court that resulted from excess of jurisdiction and a reversal of the final decision filed on May 13, 2020. The final decision is unenforceable and void because it is violative of the explicit command of" the United States Constitution, the California Constitution, federal and California state law, and the California Rules of Court.

Finnegan does not cite to the clerk's transcript in his appellate briefs. Our review of the clerk's transcript shows a single entry of a document filed on May 13, 2020, issued by the court clerk, entitled "Notice to Filing Party," which states: "We are unable to process the attached papers for the reasons indicated below: Letters cannot be issued until Substitution of Attorney form (MC-050) is filed." Even if this document constituted an appealable order, which on its face it clearly is not, it was filed well after the trial court granted the petition and Finnegan filed his notice of appeal. Finnegan does not again mention this document or provide any argument to support his purported contention of error on this point.

Finnegan asserts that the "Official Record" does not contain an express finding by the trial court that granting the petition for a conservatorship was "the least

each point by argument and, if possible, by citation of authority." The "[f]ailure to provide proper headings forfeits issues that may be discussed in the brief but are not clearly identified by a heading." (*Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 179.) Finnegan's briefs fail to contain the required headings stating contentions of error.

restrictive alternative needed for the protection of the conservatee.” Finnegan’s assertion is demonstrably false, as evidenced by the trial court’s express statement making such a finding both on the record at the conclusion of trial on the petition and in the trial court’s written order granting the petition.

In his opening brief, Finnegan implies that the filing of the petition constituted a violation of the automatic stay imposed upon Finnegan’s initiation of the bankruptcy action. The record shows the bankruptcy court itself granted Marshack’s request to file a conservatorship petition in the trial court.

Finnegan’s contentions challenging the authority and actions of the bankruptcy court, including whether the bankruptcy judge in the bankruptcy action should have been disqualified and whether Marshack is the duly appointed trustee in the bankruptcy action, are not only irrelevant, but fall outside this court’s jurisdiction, and for that matter, outside the jurisdiction of the trial court. Jurisdiction to hear appeals from final judgments, orders, or decrees in a bankruptcy case lies with the United States District Court, or, if the parties consent, with the bankruptcy appellate panel established by the judicial council of a circuit. (28 U.S.C. § 158(a)(1), (b)(1).)

Finnegan argues the order granting the petition is void because it was made by a temporary judge and the record does not contain the parties’ stipulation for a temporary judge to preside at the trial. The trial judge in this case is a sitting judge of the Orange County Superior Court, not a temporary judge.

To the extent Finnegan argues he was unfairly denied a jury trial, there is no dispute he failed to post jury fees. Section 631, subdivision (f)(5) of the Code of Civil Procedure provides that a party waives trial by jury if that party fails to timely pay the \$150 nonrefundable fee required to offset the costs to the state of providing juries in civil cases (*id.*, § 631, subd. (b)). (See *Templo v. State of California* (2018) 24 Cal.App.5th 730, 733 [rejecting argument statute requiring civil litigants to pay nonrefundable fee in

order to secure a jury trial is unconstitutional].) Finnegan therefore waived a jury trial in this case.

In addition, in his appellate briefs, Finnegan makes the following rather disembodied, stray references to various legal principles, constitutional provisions and statutes, none of which constitutes a supported contention of error, much less prejudicial error: (1) the petition was filed “with intrinsic and extrinsic fraud”; (2) “[t]he case should have been ruled a moot case or question which will not be considered by the court”; (3) “Marshack cannot prove concrete harm”; (4) there is no ripe controversy at issue; (5) the trial court lacked personal and subject matter jurisdiction; (6) “untruthful pleading or concealment of facts, a false issue is presented”; (7) the filing of the petition was baseless and intended to interfere with the bankruptcy action; (8) there is no judicial immunity; (9) “venue is lacking”; (10) mail fraud was conducted “throughout the designated period” because of a purported date discrepancy regarding Marshack’s notice of designating the record on appeal; (11) Marshack was not a “party of interest”; (12) the petition lacked “adherence” to various unspecified statutory requirements; and (13) there was no initial case management conference within 180 days, meet and confer efforts, or a case management statement.

As Finnegan has failed to develop intelligible argument regarding these references, we do not consider them further. (*Magic Kitchen LLC v. Good Things Internat., Ltd.* (2007) 153 Cal.App.4th 1144, 1161; *Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1215 [“Contentions are waived when a party fails to support them with reasoned argument and citations to authority”].) To the extent Finnegan intended to assert additional arguments in his opening brief other than those addressed in this opinion, they are forfeited because they are unsupported by relevant legal citations or analysis.

DISPOSITION

The order granting the petition to appoint a conservator of the estate of appellant is affirmed. Respondent shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.