

SUPREME COURT  
**FILED**

JUL 17 2025

Jorge Navarrete Clerk

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Deputy

Court of Appeal, First Appellate District, Division Two - No. A165245

S291320

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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ANN CORNELL, Petitioner and Respondent,

v.

PATRICIA M. CORNELL, Appellant.

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The petition for review is denied.

**GUERRERO**

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*Chief Justice*

Filed 4/30/25

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIRST APPELLATE DISTRICT

DIVISION TWO

ANN CORNELL,

Petitioner and Respondent,

v.

PATRICIA M. CORNELL,

Appellant.

A165245

(Marin County  
Super. Ct. No. PR2003455)

**MEMORANDUM OPINION**

This is a trust dispute between two sisters who are beneficiaries of their deceased mother's trust: appellant Patricia Cornell (Patricia) and respondent Ann Cornell (Ann), who is trustee. After a four-day bench trial, the trial court issued a statement of decision interpreting a disputed provision of the trust as permitting Ann, as trustee, to sell their mother's former home over the objection of Patricia, who wished to live there, and it entered judgment accordingly. Patricia, who is self-represented, now appeals.<sup>1</sup>

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<sup>1</sup> We do not recite the factual and procedural background in depth because our opinion is unpublished and the parties know, or should know, "the facts of the case and its procedural history." (*People v. Garcia* (2002) 97 Cal.App.4th 847, 851 [unpublished opinion merely reviewing correctness of trial court's decision "does not merit extensive factual or legal statement"].)

The disputed provision of the trust (Article IV(C)) states in full:

**“San Rafael Property.** All of Settlor’s interest in the real property commonly known as 6 Madrona Street, San Rafael, California (‘the Property’), and the sum of one hundred thousand dollars (\$100,000) shall be held in a trust for the benefit of Settlor’s daughters: Patricia; Ann; and, Kathleen. *The trustee shall allow any of the beneficiaries named in this Section C to reside in the property.* During the period of the trust any beneficiaries living in the Property shall pay equal shares of all taxes, insurance, mortgage and any other expenses related to the property. If no beneficiary is living in the Property the trustee shall pay all expenses. If no beneficiary chooses to live in the property, the trustee shall be permitted to rent the property to a third party in the trustee’s sole discretion. Any income shall be added to the principal. *The trustee shall also be permitted to sell the property at any time in the trustee’s sole discretion.*

“The trust shall terminate upon the earlier to occur of the sale of the Property at the discretion of the trustee, or the death of the last to die of the three beneficiaries named herein. If the trust terminates due to the Property being sold during the lifetime of one or more of the beneficiaries, the proceeds from the sale of the Property shall be apportioned into equal shares for Patricia, Ann and Kathleen. The shares for Patricia and Ann shall be distributed outright. The share for Kathleen shall be held in a trust for the benefit of Kathleen during her lifetime and administered as provided in Section E of this Article. If Kathleen predeceases the Settlor, or predeceases the termination of the San Rafael Property trust, her share shall be distributed to her descendants, by right of representation subject to the

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provisions of Article VI, Section G. If Patricia or Ann predeceases the Settlor or predeceases the termination of the San Rafael Property trust, her share shall be distributed equally to the then living daughters of the Settlor, including Cyndie, or to the survivor thereof. If the trust terminates due to the death of all three beneficiaries, the Property shall be sold and the proceeds shall be distributed to the descendants of Kathleen subject to the provisions of Section G of Article VI.” (Italics added.)

After their mother died, Ann asked her two sisters if they wanted to live in the property. Only Patricia did; neither Kathleen nor Ann herself wanted to. Ann subsequently gave notice to her sisters of her intention to sell the property, Patricia objected, and so Ann initiated this case by petitioning for instructions under the trust.

The trial court concluded that Article IV(C) was ambiguous, in that it could reasonably be construed to mean *either* that the trustee has discretion to sell the property only if no beneficiary wanted to live in it (Patricia’s position) *or* that the trustee has total discretion to sell the property at any time and under any circumstances (Ann’s). Given the ambiguity, the court permitted both parties to present extrinsic evidence of their mother’s intent, including testimony by the attorney who drafted the Trust, Cynthia Trutner, as well as Ann, Patricia and several other witness. The relevant evidence, which was conflicting, is summarized in the court’s statement of decision. At the conclusion of the evidentiary phase, the court found that their mother’s “true intention at the time the Trust was executed was to provide the trustee with as much flexibility as possible, including the ability to sell the real property in her sole discretion and without limitation.” It based this finding principally on the drafting attorney’s testimony that this was their mother’s intent, which the court found “the most compelling” testimony because it was

“corroborated by other language” of the trust.<sup>2</sup> The court thus ordered that Ann “has the sole discretion to sell [the property] . . . without limitation and . . . even if one of the trust beneficiaries objects to the sale and wishes to live in the property.” As noted, it entered judgment accordingly and Patricia then timely appealed.

## DISCUSSION

We presume that the trial court’s ruling is correct, and it is an appellant’s burden to persuade us both of an error and that the error was prejudicial. (See *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1006 [calling such framework “[t]he most fundamental principle of appellate review”].) To do this, “ ‘an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.’ ” (*United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 164 (*United Grand Corp.*)). We disregard all factual statements in Patricia’s appellate briefs that are unsupported by a citation to the record. (*Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385, 408, fn. 14; see also *East Oakland Stadium Alliance v. City of Oakland* (2023) 89 Cal.App.5th 1226, 1240, fn. 5.) In addition, “[m]ere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.” (*Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1078.) When an appellant fails to “convince us, by

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<sup>2</sup> The other trust provisions the court cited specified that “all of Settler’s interest in the real property . . . shall be held in trust for the benefit of” the sisters (Article IV(C)), and vested the trustee with the powers to “continue to hold any property . . . for as long as the trustee deems advisable” (Article VII(A)(1)) and “manage, control . . . sell for cash . . . any property of the trust” (Article VII(A)(2)).

developing his arguments, stating the law, and calling out relevant portions of the record, that the trial court committed reversible error,” the appellant’s argument is insufficient to demonstrate error. (See *Bishop v. The Bishop’s School* (2022) 86 Cal.App.5th 893, 910.) Furthermore, the only issues we are required to consider are those clearly identified in an argument heading of Patricia’s brief. If there are other arguments in her appellate briefs, they are forfeited. (See *United Grand Corp.*, at p. 153; *Tsakopoulos Investments, LLC v. County of Sacramento* (2023) 95 Cal.App.5th 280, 310.)

She challenges the trial court’s interpretation of the trust on two grounds, neither of which is persuasive.<sup>3</sup> First, she asserts that the language of Article IV(C) unambiguously means that the trustee cannot sell the home if a beneficiary wishes to live in it. Alternatively, she asserts that the “clear weight of the evidence” favors her interpretation of the disputed language, citing the testimony of various witnesses including Patricia herself, evidence of prior, superseded trusts their mother had executed as well as an email that attorney Trutner sent her shortly after her mother’s death stating that “[i]f nobody is going to live at the house, Ann has the discretion to rent the house or to sell the house.”<sup>4</sup>

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<sup>3</sup> We presume the parties’ familiarity with the legal standards governing the interpretation of trust instruments (see generally, e.g., *Trolan v. Trolan* (2019) 31 Cal.App.5th 939, 948-949), as well as the standards governing our review of the trial court’s interpretation of a disputed provision of a trust instrument (and of contracts, more generally) (see *id.* at p. 948; see also *In re Estate of Russell* (1968) 69 Cal.2d 200, 213 (*Russell*)).

<sup>4</sup> In full, the drafting lawyer wrote to Patricia “recommend[ing] that you think about whether you intend to live at your mother’s house.” The email continued, “Ann will eventually likely go back to Alaska and Casey is thinking about if she wants to live in the house. If nobody is going to live at the house, Ann has the discretion to rent the house or to sell the house. If you know if you plan to live in the house please let Ann or me know. If the

We perceive no error. Based on the trust's plain language, the trial court correctly ruled that Article IV(C) is ambiguous. It is reasonably susceptible to the meaning Patricia proffers, but it is also reasonably susceptible to the alternative meaning proffered by Ann.<sup>5</sup> On the one hand, Article IV(C) states, "The trustee shall allow any of the beneficiaries named in this Section C to reside in the property" (favoring Patricia's construction), but the very same paragraph also says "The trustee shall also be permitted to sell the property at any time in the trustee's sole discretion" (favoring Ann's). Extended analysis of this point, including the full text of Article IV(C), is unnecessary. The provision is unclear. (See *Russell, supra*, 69 Cal.2d at p. 207 ["A patent ambiguity is an uncertainty which appears on the face of the [testamentary instrument]"; *id.* at p. 211 [ambiguity exists when " 'the written language is fairly susceptible of two or more constructions' "].)

Because the trust is ambiguous and conflicting evidence was introduced at trial about its meaning, our review of the trial court's decision is very limited. It is "governed by the settled rule that where extrinsic evidence has

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house is sold, the proceeds, along with any portion of the \$100,000 remaining, will be distributed to you, Ann and Casey."

Regarding the email, the lawyer testified that she sent the email to Patricia after talking with her, about a month after her mother's death, and that she had already talked with Ann, who had not yet decided whether to sell the house. In any event, insofar as the email suggests Ann's discretion to sell the house was conditional on none of the three beneficiaries choosing to live there, it is inconsistent with the lawyer's trial testimony concerning an exhibit consisting of a letter she sent to the mother just after having drafted the restated trust.

<sup>5</sup> As she did below, Ann also asserts the disputed provision is unambiguous—but unambiguously dictates *her* interpretation. We do not agree with Ann either.

been properly admitted as an aid to the interpretation of a contract and the evidence conflicts, a reasonable construction of the agreement by the trial court which is supported by substantial evidence will be upheld.” (*In re Marriage of Fonstein* (1976) 17 Cal.3d 738, 746-747.)

Here, the court’s interpretation of the trust is certainly reasonable<sup>6</sup> and it is amply supported by substantial evidence. As summarized by the trial court, drafting attorney Trutner testified her client was concerned about family discord, said she wanted the house to be available for her daughters if it was “workable,” and was clear that because of challenging family dynamics the trustee must have broad discretion to sell the home anytime, under any circumstances and without limitation. In addition, Ann testified that when she ultimately agreed, after some hesitation because of family dynamics, to serve as trustee her mother told her, “ ‘the house is now yours, hah, hah, hah, you are going to have to put up with it,’ ” a statement that is susceptible to several reasonable inferences, one of which is that the trustee has sole discretion to manage it (“the house is now yours”). Patricia asserts that this evidence is “not compelling” for various reasons, principally asking us to reject Trutner’s testimony as both biased and contradictory of the email

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<sup>6</sup> Patricia asserts that construing the trust as allowing the trustee to sell the home at any time renders the phrase, “The trustee shall allow any of the beneficiaries named in this Section C to reside in the property” inoperable and mere surplusage. Not so. As long as the property remains a trust asset, the trustee is under an affirmative obligation to allow the beneficiaries to live in the home. Had Ann chosen to hold the home in trust (for example, to take advantage of a rising real estate market or for any other reason) she would be under a continuing obligation to allow her sisters to live there. The fact that she elected to sell the home sooner rather than later does not render the clause superfluous.

Trutner sent her.<sup>7</sup> But we cannot do this. “It is not our role to reweigh the evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony, and we will not disturb the judgment if there is evidence to support it.” (*Slone v. El Centro Regional Medical Center* (2024) 106 Cal.App.5th 1160, 1173; accord, *Lake Lindero Homeowners Assn., Inc. v. Barone* (2023) 89 Cal.App.5th 834, 838, fn. 2 [witness credibility].)

For the first time in her reply brief, Patricia also offers a new interpretation of the trust. She asserts that there is no ambiguity because both clauses can be construed together to mean that the trustee has the power to sell the house, but any such sale must be structured to preserve the beneficiaries’ right to live there, thereby giving them a “life estate and a right to occupy.” This point is forfeited, and we will not consider it, because the argument was not made in the opening brief. (See *Herrera v. Doctors Medical Center of Modesto* (2021) 67 Cal.App.5th 538, 548 [“It is elementary that

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<sup>7</sup> Patricia also has not fairly summarized all of the evidence. Where an appellant asserts that “some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error assigned is deemed to be waived.” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

She neglects to address evidence that does not favor her interpretation, such as the letter Trutner sent to Patricia and Ann’s mother after having just drafted the amended and restated trust, which summarized the provisions regarding the house in a manner consistent with the interpretation urged by Ann. It stated, in relevant part, “Your San Rafael home and cash in the amount of \$100,000 will be held in a trust for the benefit of Ann, Kathleen and Patricia. Any of the three may live in the house *during the period of the trust*. Any person living at the house will need to pay expenses such as taxes and insurance. *Ann will be the trustee of the trust and will have the discretion to rent the house to tenants and/or to sell the house. The trust will terminate at any time that Ann sells the house, or the death of the last of the three beneficiaries.*” (Italics added.)

points raised for the first time in a reply brief are not considered by the court’ ”].) It would be unfair to permit Patricia to attack the judgment on a ground as to which Ann did not have an opportunity to develop a factual record nor an opportunity to brief on appeal.

This brings us, next, to the many procedural errors Patricia asserts. She argues, first, that the trial judge erred in various ways when she struck a disqualification request Patricia filed in an attempt to disqualify her on the ground of actual bias. The trial court’s alleged errors, including her refusal to recuse herself, are not reviewable on appeal because writ review is the exclusive means of reviewing orders regarding disqualification.<sup>8</sup> (See Code

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<sup>8</sup> We gave the parties an opportunity to file supplemental briefs addressing this question. In response, Patricia contends that the court’s disqualification rulings are reviewable on appeal under the judicially recognized exception for “*nonstatutory* claims that a final judgment is constitutionally invalid” in violation of due process (*People v. Brown* (1993) 6 Cal.4th 322, 335). But she has raised no such claim on appeal. (Nor has she sought or been granted leave to file supplemental briefing raising such a claim.)

Nowhere in her opening brief (or even her reply brief) does she assert that her constitutional rights were violated. Nor do they address the applicable legal standard for such a claim. (See *People v. Freeman* (2010) 47 Cal.4th 993, 1006 [judicial disqualification under federal due process clause requires “a probability, rather than the mere appearance, of actual bias”].)

Her appellate briefing raises only state law, statutory claims. Her opening brief asserts that the trial judge “violate[d] [Code of Civil Procedure sections] 170.1[, subdivision] (a)(6) [and] 170.3[, subdivision] (c)(1)”, “ ‘failed to follow any of the prescribed statutory procedure[s]’ ” in ruling on her disqualification motion and that her disqualification motion “unquestionably presented a statutorily enumerated basis for disqualification and was timely filed.” Her reply brief asserts the trial court “did not follow California procedure for resolving [her] disqualification request.”

Patricia filed a writ petition in this court on March 9, 2022, challenging the court’s rulings, which we summarily denied. That was her exclusive means of obtaining review of the statutory disqualification issues she now

Civ. Proc., § 170.3, subd. (d); *Rivera v. Hillard* (2023) 89 Cal.App.5th 964, 976 [error in striking petition to disqualify judge for bias held unreviewable]; accord, *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 971 [on appeal from final judgment, appellants “are precluded from seeking review of their declarations of bias and prejudice (whether stricken or determined meritless)”].)

Patricia also argues that the judgment must be reversed under *Jameson v. Desta* (2018) 5 Cal.5th 594 (*Jameson*), because she obtained a waiver of court fees on the ground of indigency, and yet no court reporter was present at several pre-trial hearings and for about one hour of arguments concerning an evidentiary issue discussed at an afternoon session of trial. Patricia has not sufficiently summarized the junctures at which she contends she was denied access to a court reporter. Nevertheless, given the fundamental importance of ensuring indigent litigants equal access to the courts which is the animating principle of *Jameson*, we have independently reviewed those parts of the record about which she complains to the extent that we can identify them. Having done so, we conclude Patricia has demonstrated no basis to reverse.

The record does not reflect that Patricia ever asked for a court reporter to be present at these various junctures (or objected at any time to the lack of one). She cites no authority suggesting that her indigent status

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attempts to raise. They are not cognizable on appeal. (See Code Civ. Proc., § 170.3, subd. (d) [“[t]he determination of the question of the disqualification of a judge . . . may be reviewed only by a writ of mandate”]; *People v. Brown, supra*, 6 Cal.4th at p. 335 [the statute “applies to all *statutory* judicial disqualification claims—even those claims based on statutory provisions that . . . appear to codify due process grounds for relief”].)

automatically confers on her a right to a court reporter anyway. *Jameson* does not guarantee indigent litigants a verbatim record of trial where no request is made for one. In that case, which is unnecessary to examine in depth, the Supreme Court said it was “undisputed that if an official court reporter had been made available for the trial . . . , [the] plaintiff would have been entitled to the court reporter’s attendance *upon request* without payment of any fee.” (*Jameson, supra*, 5 Cal.5th at p. 600.) The Supreme Court simply invalidated a court-wide policy that made court reporters unavailable across the board, even to indigent litigants who would otherwise be entitled to one upon request. (See *id.* at p. 623 [holding “the trial court erred in failing to make an official court reporter available to plaintiff *upon request*,” italics added.]

Furthermore, both the Code of Civil Procedure and the California Rules of Court require a request for a court reporter. Section 269 of the Code of Civil Procedure requires a court reporter “[i]n a civil case, on the order of the court or *at the request of a party*.” (Code Civ. Proc., § 269, subd. (a)(1), italics added; see also *Jameson, supra*, 5 Cal.5th at p. 610 [the statute “contemplates that a court reporter will be present and will fully report all trial court proceedings in a civil case *whenever a party so requests*,” italics added.]) Likewise, rule 2.956 specifies that if the services of an official court reporter are not available for a hearing or trial in a civil case, a fee waiver recipient may “*request* that the court provide an official reporter for attendance at the proceedings,” in which case one must be provided unless the proceeding is electronically recorded. (Cal. Rules of Court, rule 2.956(c)(2), italics added.) The rule specifies that “[t]he request should be made by filing a *Request for Court Reporter by a Party with a Fee Waiver* (form FW-020)” and be filed “10 calendar days before the proceeding for

which a court reporter is desired, or as soon as practicable if the proceeding is set with less than 10-days' notice." (*Ibid.*)

Patricia has articulated no legal argument as to why she is entitled to reversal of the judgment without a record demonstrating that she timely asked for a court reporter to be present at the junctures she contends one was required or that she objected to the court proceeding without one. Furthermore, even assuming there was an error, violation of an indigent litigant's right to a verbatim record of proceedings is subject to harmless error review. Such errors will be deemed prejudicial where the lack of a court reporter prevents effective appellate review. (See *Jameson, supra*, 5 Cal.5th at p. 625; accord, *Dogan v. Comanche Hills Apartments, Inc.* (2019) 31 Cal.App.5th 566, 570.) Here, however, Patricia has made no attempt to demonstrate that the lack of a court reporter, on any occasion alone or in combination, prejudiced her. In any event, we are able to resolve this appeal on the merits on the basis of the extensive record before us.

Finally, scattered throughout her briefing Patricia asserts many other procedural errors including issues pertaining to the denial of key witnesses, attorney conflicts of interest, and other matters. None of those points are sufficiently developed legally and factually for us to consider them, nor has she demonstrated that any claimed error was prejudicial. "[T]he appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice" (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106), and that entails doing more than just asserting the error was harmful. (*DiRaffael v. California Army National Guard* (2019) 35 Cal.App.5th 692, 718 ["conclusory assertions of prejudice are insufficient"].) The appellant must demonstrate prejudice—by means of a legal and factual argument showing how he would have fared better in the

absence of the asserted error. When the appellant does not do this, we will not reverse a ruling even if it is wrong. (See, e.g., *DiRaffael*, at p. 718 [failure to explain how various procedural errors affected outcome held insufficient to demonstrate prejudice]; *Paterno*, at p. 106.)

#### DISPOSITION

The judgment is affirmed. Respondent shall recover her costs.

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STEWART, P.J.

We concur.

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MILLER, J.

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DESAUTELS, J.

*Cornell v. Cornell* (A165245)

COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 2

ANN CORNELL,  
Petitioner and Respondent,  
v.  
PATRICIA M. CORNELL,  
Appellant.

Appeal No. A165245  
Marin County Super. Ct. No. PR2003455

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BY THE COURT:

The petition for rehearing filed on May 20, 2025, is denied.

Date: 05/29/2025

Stewart, P.J.  
Presiding Justice

**Additional material  
from this filing is  
available in the  
Clerk's Office.**