Ventura County Bar Association

Trust, Estate & Conservatorship

Annual Litigation Update

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PROBATE LITIGATION

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TRUSTS – ENFORCEMENT OF NO CONTEST CLAUSES

Key v. Tyler, 102 Cal.App.5th 36, 321 Cal.Rptr.3d 487 (May 28, 2024)

A challenge brought against an amendment may be enough to support enforcement of a no contest clause even where it was not reprinted in the amendment because the assets to be inherited were given under the original trust instrument.

BACKGROUND:

In 1999 the Settlors executed the "Original Trust." Upon the passing of the deceased spouse, three trusts would be created: (i) the Survivor's Trust; (ii) the Marital Trust; and (iii) the Exemption Trust. On the death of the surviving spouse, a final trust would be created: the Residual Trust. In 2003, the Settlors executed an amendment that distributed all assets equally among their three daughters. In 2007, the Settlors signed an amendment that significantly reduced one daughter's, Key's, share. Key successfully challenged the amendment on the grounds that Tyler committed financial elder abuse (undue influence).

In 2019, the Court determined that Tyler's defense of the 2007 Amendment constituted a "direct contest" of the Original Trust. Tyler argued that she was still entitled to inherit ½ because she should inherit under the 2003 Amendment and that amendment did not contain a no contest clause.

KEY ISSUE:

Whether Tyler's direct contest of the Original Trust in her defense of the 2007 Amendment was sufficient to support enforcement of a no contest clause even though that clause was not reprinted in the 2003 Amendment.

RESULT:

The court found that Tyler's direct contest of the Original Trust was sufficient to support enforcement of the no contest clause. The court reasoned that the assets in the Residual Trust that Tyler sought to inherit were passed to Tyler from the Original Trust. The Original Trust did contain a no contest clause which required the challenger to forfeit all interests under "this Trust" or "any other trust," including the Residual Trust. While the 2003 amendment did not have a no-contest clause, the absence of the clause was not controlling and did not limit the forfeiture.

PROPERTY TAX REASSESSMENT

Prang v. Los Angeles, 15 Cal.5th 1152, 321 Cal.Rptr.3d 351 (May 30, 2024)

Real properties transferred from a corporation to a revocable trust resulted in a reassessment of the properties because the trust and corporation did not have identical ownership.

BACKGROUND:

Super A Foods, Inc., a corporation operating two supermarkets in Los Angeles, had two classes of stock: voting and non-voting. Voting stock shareholders held all control rights for the corporation. In December 2014, the corporation transferred 92.8% of the stock of the Amen Family 1990 Revocable Trust (including 100% of the voting stock), with the remaining stock being owned by a long-time employee and four other members of the Amen family. The minority shareholders were not beneficiaries of the Trust.

The property transfer resulted in a property tax reassessment because the proportional ownership interests in the properties were not the same before and after the transfer because of the interests of the minority, individual shareholders.

The Los Angeles County Assessment Appeals Board reversed the assessor's decision, then the Appeals Board vacated the decision. The trustees of the Trust appealed.

KEY ISSUE:

Whether the transfer from the Corporation to the Trust constituted a change in ownership which would trigger reassessment.

RESULT:

The Supreme Court determined that the transfer of the corporation to the Trust constituted a transfer that triggered the reassessment of the property taxes because it did not fall within any exclusions for transaction involving a legal entity because the proportional ownership interests in the property were not identical before and after the transfer.

UNIFORM ELECTRONICS TRANSACTION ACT – TESTAMENTARY INTENT

Trotter v. Van Dyck, 103 Cal.App.5th 126, 322 Cal.Rptr.3d 622 (June 27, 2024)

An estate planning questionnaire sent to an estate planning attorney was insufficient to act as amendment.

BACKGROUND:

The Surviving Trustor of a revocable family trust exchanged emails with her son and an estate planning attorney about creating a trust amendment intended to disinherit her stepdaughter with whom she no longer had contact. The Surviving Trustor partially filled out an estate planning questionnaire in which she included instructions for distribution and removal of the stepdaughter from the will. The Surviving Trustor underwent surgery and died prior to the creation of a new formalized amendment. After the Surviving Trustor passed away, the son petitioned the court for instructions to determine whether the Surviving Trustor's writings were sufficient to constitute a trust amendment. The probate court determined that the writings were insufficient to constitute a trust amendment. The son appealed.

KEY ISSUE:

Whether an estate planning questionnaire filled out by the Trustor is valid to constitute an amendment.

RESULT:

While the Surviving Trustor was authorized to amend the Trust, the amendment had to be in writing and signed by the Surviving Trustor and delivered to the Trustee. Here, the document emailed was not signed, and the electronic signature provision of the Uniform Electronics Transaction Act does not apply because a unilateral trust amendment does not constitute a "transaction" within the meaning of the statute. Further, the Surviving Trustor's writing did not specifically state that she intended to amend the trust using that document. The Court determined that this writing was simply correspondence between the Surviving Trustor and her attorney regarding a potential update, and did not constitute a trust amendment.

STATUTES OF LIMITATIONS – DECEDENT'S PROMISE TO MAKE A GIFT

Smith v. Myers, 103 Cal.App.5th 586, 323 Cal.Rptr.3d 157 (June 27, 2024)

The one-year statute of limitations claims arising from a decedent's promise to distribute does not apply to claims for distribution under a valid trust amendment.

BACKGROUND:

In 1992, the Decedent gave his daughter, Kathleen, a 45.8% share of his ranch in his life following the passing of his wife. The Decedent remarried in 1999. In 2000, he left the remaining interest of the ranch to his new wife, Emma. In 2016, the Decedent created a new amendment which would have left Kathleen and Kathleen's husband, Bruce, the remaining share of the Estate. Emma maintained that this amendment was not valid. In 2020, Emma and Bruce filed a petition to confirm the validity of the amendment and to remove Emma as Trustee of the Trust. Emma filed a demurrer as to Bruce's claim specifically saying that he "failed to file his claim that the decedent left him a testamentary gift through a trust amendment within one year of the decedent's death," and was time barred from seeking the requested order under Probate Code section 366.3. The Probate Court denied the motion, confirmed the validity of the amendment favoring Kathleeen and Bruce, and the trustee appealed.

KEY ISSUE:

Whether Section 366.3 applies to claims based on trust amendment, which, if enforced, would distribute from that trust to the prevailing beneficiary.

RESULT:

The appellate court affirmed the decision of the lower court. The court found that Section 366.3 applies to claims that arise from promises or agreements by a decedent for distribution from an estate, trust, or other instrument. However, this matter was not based on a promise, but on movants' effort to enforce the amendment itself. The amendment could not be considered a "promise" because the decedent was free to revoke or change the amendment while he was alive.

FEDERAL ESTATE TAX – VALUATION OF CLOSELY HELD CORPORATIONS

Connelly v. United States, 602 U.S. 257, 144 S.Ct. 1406 (June 6,2024)

A contractual obligation to redeem shares is not necessarily considered a liability that reduces a corporation's value for purposes of federal estate tax.

BACKGROUND:

Brothers, Michael and Thomas Connelly, were the sole shareholders of their company, Crown C Supply. They entered into an agreement to ensure that the company would stay within the family when either brother passed away. Under that agreement, the survivor would have the option to purchase the deceased brother's shares. If he declined, the company itself would be required to purchase the shares. After Michael died, Thomas decided not to purchase Michael's shares, so the company was now required to do so. To ensure that this could be completed, the company held $3.5 million life insurance policies on each brother.

Michael was the executor of the estate and filed a federal tax return for the estate reporting the value of Michael's shares as $3 million. The company used $3 million of the life insurance policy to purchase the shares. The Internal Revenue Service (IRS) performed an audit and obtained an outside valuation from a third-party accounting firm that determined that Crown C Supply fair market value was actually $3.86 million at the time of Michael's death. This valuation excluded the $3 million in insurance proceeds used to purchase the shares on the theory that the value of the shares was offset by the redemption obligation. The IRS argued that the company's requirement to purchase the shares did not offset the life insurance proceeds and assessed the company's total value at $6.86 million resulting in a tax deficiency. The estate paid the deficiency, then sued the United States for a refund. The District Court granted summary judgment to the Government and the Eighth Circuit affirmed.

KEY ISSUE:

Whether a requirement to purchase shares at fair market value offsets the value of life insurance proceeds.

RESULT:

The Supreme Court found that the requirement to purchase shares at fair market value did not offset the value of life insurance proceeds because a share redemption at fair market value does not affect any shareholder's economic interest. While the Supreme Court recognized that there were some situations where a redemption obligation could decrease a corporation's value, it is not true in all situations including here.

BREACH OF FIDUCIARY DUTY – DOUBLE DAMAGES

Asaro v. Maniscalco, 103 Cal.App.5th 717, 323 Cal.Rptr.3d 275 (July 12, 2024)

The deterrent penalty provisions contained in Probate Code section 859 for damages double the value of trust property wrongfully taken is in addition to the remedy of recovering the trust property or its value. The penalty is awarded to the individual who brought the action.

BACKGROUND:

Nicola and Antoinette Giacalone created their trust in 1985 and then restated their trust in 2005. In this restatement, upon the death of the first spouse, the trust would be divided into two trusts. The "Survivor's Trust" and an irrevocable "Residual Trust." The Survivor's Trust would consist of the survivor's separate property and one-half interest in the community property. The Residual Trust would contain the decedent's separate property and one-half interest in the community property. The Residual Trust was to be divided between Anthony Asaro and Jon Maniscalco.

In 2009, Antoinette was incapacitated due to her Alzheimer's disease. Nicola appointed Jon as his attorney-in-fact giving Jon immediate broad powers over Nicola's assets and named him as his successor trustee on Nicola's resignation, death, or incapacity. From April 2009 to September 2010, Jon cashed out well over $1 million in assets and placed the funds in a joint account held with Jon and Nicola. In November 2010, Nicola executed a sixth amendment to the trust formally appointing Jon as cotrustee and removing Anthony Asaro as a beneficiary. Antoinette passed away in November 2010. The beneficiaries did not receive notificiation of irrevocability under 16061.7 et seq.

From April 2010 to May 2011, Jon received numerous "fees" and gifts from the trust. By May 2011, Nicola suspected Jon was stealing from the trust and revoked Jon's power of attorney and appointed another nephew: Matteo and Matteo's wife, Madelyn. Jon petitioned to remove Madelyn and Matteo and for the appointment of a conservator for Nicola. Nicola objected, claiming that Jon had misappropriated assets from the trust. This was resolved through settlement in October 2011 when Jon agreed to dismiss his conservatorship petition, withdraw his objection to Madelyn and Matteo serving as trustees and to repay $970,000 to the Trust that had been removed from the Trust-held Brokerage account.

In 2016, Nicola passed away, and in 2017 Jon filed a petition against Matteo and Madelyn for breaches of fiduciary duty. Asaro filed his own petition for breach of fiduciary duty against Matteo and Madelyn and Jon. He also filed a petition asserting claims of elder abuse against Jon (on behalf of Antoinette and Nicola) and requested the return of trust property from Jon, Madelyn, and Matteo. With respect to the claims against Jon, the court held that Jon had breached his fiduciary duties to the trust by and committed financial elder abuse against Antoinette. The court ordered Jon to reimburse the Residual Trust $547,370. Pursuant to Probate Code section 859, Jon was held liable for twice the value of the property returned to the Residual Trust: a penalty of $1,094,740 and order Jon to pay Asaro's fees and costs. The court awarded these penalties under 859 to Asaro personally because the "recovery against Jon is the result entirely of his efforts in this litigation, and because a contrary result could result in a partial payment to Jon of an amount awarded against him because of his own wrongdoing, which would be an inequitable result." Jon appealed.

KEY ISSUES:

(1) Whether the double damages ordered under Probate Code section 859 are in addition to the return of the trust property as awarded by Probate Code section 856

(2) Who is entitled to the penalty recoverable under Probate Code section 859.

RESULT:

The appellate court affirmed, agreeing with Estate of Ashlock (202) 45 Cal.App.5th 1066 and disagreeing with Conservatorship of Ribal (2019) 31 Cal.App.5th 519. The appellate court found that the damages in this case were a combination of the effect of Probate Code section 856 and Probate code section 859. Additionally, the appellate court affirmed that Section 859 does not limit to whom the damages must be paid, and the Probate Court properly exercised its discretion to award the damages to the petitioner-beneficiary because he was the only beneficiary who acted and the award prevented the trustee from sharing in the recovery in his role as beneficiary.

LEGAL MALPRACTICE - DUTY OF CARE TO NONCLIENTS

Grossman v. Wakeman, 104 Cal.App.5th 1012, 325 Cal.Rptr.3d 163 (September 4, 2024)

A legal malpractice claim was precluded because the attorney and law firm did not owe a duty of care to beneficiaries where the intent of the trustor as to whom to leave the estate was disputed.

BACKGROUND:

In 2003, the Trustor, Richard Grossman, created a revocable trust that left his personal property to his wife, Elizabeth Grossman, and then divided the estate equally between his two sons, Jeffrey Grossman and Peter Grossman. In 2011, Richard met with his estate planning attorney who was a certified estate planning specialist. Richard told his attorney that he wanted half of his estate to go to Jeffrey and the other half to his grandchildren (Peter's children). In December 2011, Richard to the estate planner that he wanted to leave everything to Elizabeth and let her decide what to do with it. The estate planner advised Richard that this was effectively a disinheritance of his children and grandchildren and advised Richard to get a neurological exam contemporaneous with the trust. In March 2012, Richard received a neurological exam and was found to be competent in making his own financial and estate planning decisions.

In December 2011, the estate planner sent Richard a draft. In January 2012, Elizabeth sent the estate planner correspondence saying that Richard did not want to change the distribution and still wanted to give 50% to the grandchildren and Jeffrey. However, at the meeting Richard signed the document leaving everything to Elizabeth and said to the estate planner, "Elizabeth will make sure they're taken care of." The estate planner repeatedly maintained that Richard wanted 100% of his assets to go to Elizabeth. However, other witnesses testified that Richard wanted to keep Jeffrey and his grandchildren in the trust.

After testimony, the jury returned a special verdict that Richar's intended beneficiaries were Jeffrey and the grandchildren. They awarded damages of $9.5 million. The attorneys appealed.

KEY ISSUE:

Whether the attorney owned a duty of care to the beneficiaries of a trust.

RESULT:

The appellate court reversed. A nonclient third party can maintain a malpractice action only if there is "clear, certain, and undisputed" intent to benefit said nonclient third party. Here, the evidence presented was not "clear, certain, and undisputed," and was therefore, insufficient to support a claim of legal malpractice. Citing *Gordon v. Ervin Cohen & Jessup LLP*,88 Cal.App.5th 543, 305 Cal.Rptr.3d 53 (2023), the appellate court stated, "[t]he imposition of malpractice liability in these circumstances would not only be unjust, it would also 'place an 'intolerable' 'burden' on the legal profession.'"

LPS CONSERVATORSHIPS

Conservatorship of T.B., 99 Cal.App.5th 1361, 318 Cal.Rptr.3d 641 (February 27, 2024)

BACKGROUND:

The Public Guardian for Contra Costa filed a Lanterman-Petris-Short (LPS) Conservatorship in connection with an individual who was charged with misdemeanor battery upon a peace officer and found incompetent to stand trial. The proposed conservatee had been diagnosed with a dual diagnosis of schizoaffective disorder and methamphetamine use disorder and had been homeless for over a decade.

Effective January 1, 2023, Section 5350(d)(2) of the Welfare & Institutions Code provides that the "failure to commence the trial [on an LPS conservatorship] within [10 days of a demand for trial] is grounds for dismissal." Though the trial was originally scheduled within ten days of the proposed conservatee demanding a jury trial, the Court granted several continuances. The proposed conservatee filed a motion to dismiss the proceedings because of the trial continuances beyond the deadline in Section 5350(d)(2), because the trial court's calendar (which was the basis for the continuances) was not good cause for a continuance. The trial court denied the motion, the trial eventually went forward, and conservatorship was imposed. An appeal followed.

KEY ISSUE:

(1) Is Section 5350(d)(2)'s requirement that trial take place within 10 days mandatory or directory?

(2) Was the failure to dismiss the case a due process violation?

RESULT:

The Court of Appeal affirmed. While "mandatory" statutory requirements refer to a duty that a governmental entity is required to perform, a procedural requirement is "directory" where the failure to comply does not invalidate the action ultimately taken. In a detailed discussion of the LPS Act as a whole and its history, the Court of Appeal reasoned that the intention behind Section 5350(d)(2) was for the statute to be directory and not mandatory. As such, while the extended length of trial was in excess of the time allotted under Section 5350(d)(2), because the statute said that the delay was "grounds for" dismissal, the language suggested that the dismissal was based on the Court's discretion in such instances, as opposed to being automatic. Further, because the lawyer for the proposed conservatee did not raise the issue until after the trial court had already granted three continuances, and because the delay did not create an appreciable impact on the proposed conservatee's defense, there was no demonstrated due process violation.

ESTATE LITIGATION – OMITTED CHILD

Estate of Williams, 104 Cal.App.5th 374, 324 Cal.Rptr.3d 406 (August 21, 2024)

To be entitled to inherit as an omitted child, the omitted child must prove that the only reason for their disinheritance was that the testator was unaware of the child's birth.

BACKGROUND:

The Decedent fathered seven children. Prior to moving to California, he fathered five including the appellant, Carla Montgomery. The decedent moved to California shortly after Carla's conception and was unaware of Carla's existence. He was aware of the five other children, but not Carla. After moving to California, he got married and fathered his two youngest children.

In 1999, after Carla's birth, the Decedent created a new trust which only included two of his children. Carla learned of her father in 2019 after a DNA match for Carla's daughter brought up Carla's half siblings. The decedent passed away prior to this discovery. Carla petitioned to receive a share of the estate under Probate Code section 21622. The court did determine that Carla was not known to Benjamin, however, Carla failed to show that the sole reason for Carla's disinheritance was that he was unaware of her birth. Specifically, the decedent had not provided for his other known children, only the two named in trust. Additionally, the trust did not contain a general disinheritance clause.

Carla appealed.

KEY ISSUE:

Whether an omitted child must prove that the only reason for their disinheritance was that the testator was unaware of the child's birth.

RESULT:

The court determined that for an omitted child born prior to the creation of a trust, the child must prove that the only reason for their disinheritance was that the testator was unaware of that child's birth. Otherwise, they are presumed to be intentionally omitted. A general disinheritance clause is one way to demonstrate intent to omit unknown heirs, however, it is not the only way. Here, the failure to provide anything for his other known children shows intent to provide only for the two children in the trust named as beneficiaries.

TRUST LITIGATION – STANDING TO SUE

Hamlin v. Jendayi, 105 Cal.App,5th 1064, 326 Cal.Rptr.3d 496 (October 17, 2024)

Intestate heirs have standing to contest a trust under Probate Code Section 17200 even if they are not named as beneficiaries in a trust document.

BACKGROUND:

The Decedent, Dr. Laura Dean Head, passed awa in 2013 leaving two sisters, Della Hamlin and Helaine Head. Two months prior to the Decedent's passing, a former student and friend to the Decedent, Zakiya Jendayi, visited the Decedent and got her to sign a new trust document named Jendayi as the sole beneficiary and trustee of the trust. In 2020, Della and Helaine petitioned to invalidate the trust based on undue influence, lack of capacity, and forgery. Early in the litigation, the trial court raised questions regarding whether Della and Helaine had the standing to sue and decided they did not have standing under section 17200; however, the court permitted the action when they clarified that they were relying on other legal authorities such as financial elder abuse and invalidation. Ultimately, the Probate Court granted the petition finding that there was undue influence and the trust was invalidated. Jendayi appealed asserting that Della and Helaine did not have standing to contest the trust as they were not trustees or beneficiaries.

KEY ISSUE:

Whether intestate heirs have standing to contest a trust under Probate Code Section 17200.

RESULT:

The appellate court found that there is nothing in Probate Code Section 17200 that limits standing before the probate court to only include trustees and beneficiaries. Further, they determined that an interpretation of Section 17200 that limited standing in such way would conflict with Probate Code Section 16061.7 and bar standing for intestate heirs who are entitled to receive statutory notice of their right to contest the trust.

TESTAMENTARY TRANSFER – UNREASONABLE RESTRAINT ON ALIENATION

Godoy v. Linzner, 106 Cal.App.5th 765, 327 Cal.Rptr.3d 323 (November 13,2024)

The prohibition against unreasonable restraints on alienation under Civil Code section 711 applies to real property transferred through testamentary instruments.

BACKGROUND:

A Settlor created a trust which decreed that the children could only sell their shares in the settlor's residence for an amount well below market value and only to each other to keep the home in the family. Two of three children of the Settlor to whom the property was left filed a petition requesting that the trust agreement be modified arguing that this term was an unreasonable restraint on alienation and seeking to compel the third child to sell the residence on the open market. The probate court granted the petition. The successor trustee appealed.

KEY ISSUE:

Whether Civil Code section 711 prohibiting unreasonable restraints on alienation applied to real property transferred through testamentary instruments.

RESULT:

The appellate court affirmed finding that the prohibition of restraints on alienation in Civil Code section 711 did apply to real property transferred through testamentary instruments except for certain recognized exceptions (i.e. a spendthrift trust). Civil Code section 711 voids conditions restraining alienation, when repugnant to the interest created. Here, the court determined that settlor's-imposed restrictions that the beneficiaries could only sell to each other and for far less than the fair market value was considered unreasonable and was therefore void.

APPEALABILITY OF SUSPENSION ORDERS

Young v. Hartford, 106 Cal.App.5th, 327 Cal.Rptr.3d 297 (November 12, 2024)

An order suspending a trustee and appointing an interim trustee is not immediately appealable.

BACKGROUND:

Defendant Stanley Hartford was trust protector and defendant Debbie Fleshman was the trustee of the Carolyn Patricia Young Family Trust. Plaintiff Christa Ann Young is a current beneficiary and alleged that Hartford and Fleshman conspired to improperly withhold trust funds from Young and other charitable beneficiaries that were to receive a portion of the net income of the trust annually in an attempt to preserve assets for Fleshman, a residual beneficiary who will inherit half the proceeds on Young's death.

Young filed *ex parte* to have Fleshman's and Hartford's powers suspended, appoint a professional fiduciary as interim trustee, require the interim trustee to post a bond, set a review hearing, and prohibiting the interim trustee from using trust assets as compensation without prior authorization of the court. The *ex parte* petition was granted. Defendants appealed. The Plaintiff filed a motion to dismiss the appeal and sought sanctions arguing that the appeal was frivolous and a delay tactic.

KEY ISSUE:

Whether an order suspending a trustee and appointing an interim trustee is directly appealable.

RESULT:

The appellate court dismissed the appeal but denied the requested sanctions. The appellate court determined that an order suspending the powers of a trustee and trust protector are not appealable as they are not final orders "[s]urcharging, removing, or discharging a fiduciary" and instead are provisional remedies. Similarly, the order appointing an interim trustee is not appealable because it is a provisional remedy.

LIS PENDENS – REAL PROPERTY CLAIM

Newell v. Superior Court, 107 Cal.App.5th 728, 328 Cal.Rptr.3d 322 (December 20, 2024)

A lis pendens may be recorded accompany to a petition seeking a change in trustee of a trust that holds real property because such a petition constitutes a real property claim within the meaning of Code of Civil Procedure 405.4.

BACKGROUND:

Lucy Mancini Newell believed that she was supposed to be the trustee and sole beneficiary of her parents' trust, however, after her father passed away she learned that he had amended the trust to name his 56 year-old caregiver, Neneth Rollins, as the trustee and sole beneficiary. Newell challenged the validity of the trust amendment alleging undue influence and financial elder abuse and requested that Rollins be suspended and ultimately removed as trustee. After filing, Newell learned that Rollins used trust assets to purchase a home using trust funds. Newell filed a supplement to the petition alleging that Rollins held title to the real property as trustee of the trust and asked the court to impose a constructive trust. Newell also recorded a *lis pendens* on the home.

Rollins filed a motion to expunge the *lis pendens* alleging that the pleading on which the notice was based does not have a real property claim. Newell argued that the asserted claims do amount to real property claims because the petition was requesting a constructive trust on the real property it "will clearly affect title to and the right to possession of the real property subjected to the lis pendens." The court ruled in favor of Rollins. Newell filed a petition for a writ of mandate.

KEY ISSUE:

Whether a petition seeking a change in trustee of a trust that holds real property constitutes a real property claim for the purpose of recording a lis pendens.

RESULT:

The appellate court granted the petition for writ of mandate and directed the probate court to enter a new order denying the motion to expunge. The court found that where a cause of action would affect title to or the right to possession of a specific real property, it was a "real property claim." Here, Newell's petition requested a constructive trust which would affect the title and ownership of the property.

ADVANCED HEALTH CARE DIRECTIVES

Harrod v. Country Oaks Partners, LLC, 15 Cal.5th 939, 319 Cal.Rptr.3d 400 (March 28, 2024)

A health care agent does not have the power to enter into dispute resolution agreements, including mandatory arbitration.

BACKGROUND:

Charles Logan named his nephew, Mark Harrod, as his agent using a form patterned on and specifically citing to California's Health Care Decisions Law (Prob. Code § 4600 et seq.). The form gave Harrod the power to make various health care decisions including consenting to medical care, choosing physicians, choosing medical facilities, and the release of medical information. Logan was admitted to the skilled nursing facility at Country Oaks Care Center. For Logan to be admitted, Harrod signed two separate agreements.

The first was an admission agreement that authorized Logan's care at the facility, and specified services, payment, and facility rules. The agreement was state-mandated and unalterable by Health & Safety Code § 1559.61.

The second was an optional arbitration agreement. Based on Logan's treatment and experiences at Country Oaks Care Center, Logan brought a lawsuit asserting elder abuse and breaches of the standard of appropriate care. Country Oaks Partners, LLC moved to compel arbitration. The superior court denied the motion because the authority granted to Harrod only gave Harrod the ability to make health care decisions. It did not authorize him to enter into an arbitration agreement. The Court of Appeal affirmed. Defendants appealed.

KEY ISSUE:

Does a power of attorney authorizing an agent to make "health care decisions" include the ability of the agent to bind the principal to arbitrate disputes?

RESULT:

The Supreme Court of California affirmed the decision. The form giving Harrod power to make "health care decisions" further defined health care decisions as decisions regarding (1) consent, refusal to consent, or withdrawing consent to any medical care, including life sustaining care; (2) choosing or rejecting physicians, other health care professionals, or health care facilities; (3) receiving and consenting to the release of medical information, and (4) authorization of organ donation, autopsy, and disposal of remains. "Health care decisions" do not include the ability to enter into dispute resolution agreements, and the directive did not authorize Harrod to enter into these types of agreements.

CAPACITY

In re Marriage of Diamond, 106 Cal.App.5th 550, 327 Cal.Rptr.3d 139 (November 5, 2024)

Applying Probate Code section 810, the Family Court found, and the Court of Appeal affirmed, that wife was unsuccessful in asserting defenses of lack of capacity and duress to set aside judgment for custody and child support in favor of husband in family law proceeding.

BACKGROUND:

Susan and Troy were married in 1992 and they had two daughters. Susan and Troy separated in 2008. Susan filed for divorce in 2013. Subsequently, after Troy responded and served discovery, Susan's attorney requested to be relieved as counsel. Susan did not appear at the hearing and the motion was granted. She was self-represented through the rest of the proceeding and up through trial, but did not respond to discovery, to motions, to orders compelling discovery including sanctions, nor did she appear at trial. At trial, the Court awarded custody to Troy and found in his favor on child support.

Subsequently, Susan retained new counsel and sought to set aside the judgment on multiple occasions and these requests were denied. Her second request was based on duress and mental incapacity, whereby she stated in a declaration that she was "medically incapable of appearing in Court due to poor health, duress and mental incapacity resulting from the abuse and domestic violence [by Troy]." She also submitted declarations from two doctors. One of the doctors opined that she did not have significant cognitive impairment, but anxiety and depression that interfered with her processing.

After a 20-day trial, the Court found that Susan's testimony concerning her mental incapacity and duress and that they were either not true or exaggerations and declined to set aside the judgment.

KEY ISSUE:

Whether Susan could meet her burden to prove that her failure to participate over the course of a dissolution proceeding, including trial, was a result of her lack of mental capacity and duress.

RESULT:

Affirmed. The party seeking to set aside a family judgment based on incapacity or duress has the burden of proof under Family Code section 2122. Though the Family Code does not define "mental incapacity", Probate Code section 810 et seq. is the starting point for any mental capacity determination. There is a rebuttable presumption under Probate Code section 810(a) that a person has capacity. Also taking into account the guardian ad litem standards under Code of Civil Procedure section 372 and the Civil Code presumption of "unsound mind" if a person is unable to manage their own financial resources or resist fraud or undue influence, the Court of Appeal concluded that the most analogous circumstances to Family Code section 2122 – i.e. whether a person has mental capacity in a dissolution proceeding – are those governed by Probate code section 810 and Code of Civil Procedure section 372. In so finding, the Court concluded that a person lacks capacity for those purposes when they "suffer[] from a mental deficit that significantly impairs his or her ability to understand and appreciate the nature or consequences of his or her actions or of the family law proceeding." The fact that Susan was "likely

depressed and anxious" did not control when she was able to sell her home, use proceeds to pay property taxes, pay her daughter's tuition, write and cash checks, sell cars, firearms, and personal items and was able to leave her home to attend her daughter's graduation and run errands. As such, she did not lack capacity within the meaning of the Probate Code definition as applied to the Family Code.

Further, Susan did not meet her burden to show that her husband intentionally used threats or pressure to induce her not to participate in the dissolution proceeding.

FIDUCIARY DUTY - TRUSTEE

Koski v. Campbell, No. H051453, Cal. Ct. App. (July 25, 2024)

A probate court's order granting a trustee's petition to remain neutral in litigation and file no responsive pleading should have been denied as the express language of the trust directed the trustee to defend against any challenge and for the trust to bear the cost.

BACKGROUND:

Kiomars Fiazi created a trust in 2006, and restated and amended the trust three times. The most recent amendment was written in 2020 (the "2020 Amendment"). The latest version of the trust removed Fiazi's nephew, Respondent Schyler Campbell, and added a friend, Appellant Dinora Figueroa. In the trust itself, Fiazi acknowledged that excluded family members questioned the amendment, but that he was still choosing to exercise "his right to dispose of his assets as he so chooses without interference from anyone who disagrees."

The trust included a no contest clause in the Restatement and Articles Ten and Thirteen authorized the trustee to defend the trust, the 2020 Amendment added a no contest clause to Article Eight. This newly added no contest clause stated: "The successor trustee is directed to and authorized to defend at the expense of the trust estate, any contest or other attach of any nature on this trust or any of its provisions."

Fiazi passed away in October 2022. In 2023, Campbell filed a petition challenging the 2020 Amendment claiming that Fiazi lacked capacity and the amendment was the result of undue influence by Figueroa.

Manijeh Koski was the trustee of the trust and filed a petition for instructions regarding the dispute. Koski requested that the court authorize Koski to remain "neutral" in the dispute and not use trust resources for the pending proceedings. Koski argued that while the trust had language directing her to defend a challenge, it was simply the authorization to do so. Cambell supported Koski staying neutral while Figueroa objected. The court ultimately ordered Koski to remain neutral and file no responsive pleading.

KEY ISSUE:

Whether the probate court erred in ordering trustee Koski to remain neutral with respect to Campbell's litigation and not file a responsive pleading.

RESULT:

The court determined that the probate court erred in ordering trustee Koski to remain neutral with respect to Campbell's litigation and not file a responsive pleading. The court found that the 2020 Amendment contained an express directive, not just discretionary authorization, to the successor trustee to defend against any attack on the trust which would include Campbell's petition.

Additionally, the court had the "primary duty" to construe the trust in the way intended by the settlor. Here, the language clearly supported a finding that this was a directive more than a mere authorization.

The court further rejected Koski's argument that filing a petition would cause "an accusation of breaching her fiduciary obligations" because she has a duty to "deal impartially' with beneficiaries. The court cited Probate Code sections 16003 and 16000 stating that a trustee must deal impartially with beneficiaries "except to the extent the trust instrument provides otherwise." Here, the directive to defend the trust in the Second Amendment takes precedence over dealing impartially with the beneficiaries. The court determined that Koski's petition for instructions to remain neutral regarding Campbell's petition should have been denied. The order was reversed.