San Luis Obispo County Bar Association

Trust, Probate & Conservatorship Annual Litigation Update

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Probate Code Section 859 Damage

Estate of Ashlock (2020) 45 Cal.App.5th 1066

If a court, pursuant to Probate Code section 856, orders that a petitioner is entitled to recover property that was wrongfully taken, and, likewise concludes, pursuant to Probate Code section 859, that such property was wrongfully taken in bad faith, thepenalty for such wrongful taking is twice the monetary value of the property wrongfullytaken under Section 859. And, such penalty is separate and distinct from the independent obligation to reconvey the wrongfully taken property.

BACKGROUND:

In a consolidated action, the decedent's son petitioned the court to invalidate certain trust instruments and opposed a petition by a woman to admit the decedent's purported will to probate. The decedent's son opposed the probate petition on multiple grounds, including the fact the woman had drafted the will and named herself the sole beneficiary. The decedent's petition challenging the validity of the trust instruments alleged that the woman drafted and executed the trust instruments on the decedent's behalf.

A prior judgment found that the woman, who had been granted power of attorney by the decedent years prior, had forged documents purporting to show the creation of certain partnerships. And, the woman used her power of attorney to transfer title of certain real property into the decedent's trusts that she drafted. During trial, the woman conceded that the trusts were invalid. The trial court determined, among otherthings, that the woman, by these actions, misappropriated
$5,148,000 of real property.

In addition to ordering that the woman reconvey title to the wrongfully taken real property back to the decedent's estate, pursuant to Probate Code section 856, the trial court likewise ordered that the woman pay a penalty of $10,296,000 – i.e. twice thevalue of the aforementioned real property – pursuant to Probate Code section 859.[1] In so doing, the trial court relied on *Estate of Kraus* (2010) 184 Cal.App.4th 103which applied the same interpretation of how damages should be calculated under section 859.

The woman argued, relying on *Conservatorship of Ribal* (2019) 31 Cal.App.5th 519, that the trial court erred in making this calculation—claiming that itamounted to treble damages in contravention of Section 859 which only allowed for the

[1] Section 859 states in relevant part: "If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of [the subject] property … , the person shall be liable for twice the value of the property recovered by an action under this part. …"

recovery of damages of twice the value of the property recovered.

KEY ISSUE:

Whether the "twice the value" penalty under Section 859 includes the recovered property.

RESULT:

As is relevant here,[2] the Court of Appeal affirmed. In arriving at its conclusion, the Court of Appeal explained that Section 856 is designed to effectuate the reconveyance of wrongfully taken property. And, there is nothing punitive about requiring a thief to return stolen property to its rightful owner, which undermines *Ribal*'s conclusion that a penalty imposed under section 859 subsumes the wrongdoer'sobligation under section 856 to return the misappropriated property. The Court of Appeal further explained that the statutory language of Section 856 treats the duty to return the property as a separate and antecedent obligation from that prescribed by Section 859. By way of analogy, the Court of Appeal pointed out that, if someone misappropriated a diamond ring worth $10,000, the opposing party suffers no punishment or detriment by returning it to its rightful owner. However, if the person is found to have acted in bad faith, she is *also* "liable for twice the value of the propertyrecovered." (§ 859.) So, in this hypothetical scenario, the Court of Appeal pointed out that twice the value of the property would be $20,000.

Keading v. Keading 2021 WL 631635

An award of double damages under Probate Code 859 for elder financial abuse does not require a separate finding of bad faith.

BACKGROUND:

Siblings, Hilja and Kenton Keading, filed multiple actions following the deaths of their parents. Although Hilja had been estranged from her family for a period of time, both Hilja and Kenton assisted with caring for their parents when their health declined. After mom passed, dad amended the family trust to treat the siblings equally and executed a power of attorney naming Hilja as agent.

In the month leading up to dad's death, Kenton had dad execute a declaration

[2] The Court of Appeal affirmed the trial court's judgment with respect to the damages calculation under Section 859, but reversed in part relative to an additional surcharge, which was erroneously calculated in the trial court, but which is not relevant for the purposes of the key question that is at issue here.

stating there had been no financial abuse, as well as a power of attorney naming Kenton. Kenton also had dad transfer stock to him. Kenton then secretly transferred the family home to himself and dad in joint tenancy and amended the Keadings' trust to remove Hilja as successor trustee.

The trial court initially removed Kenton and appointed a professional fiduciary to administer the trust. In advance of trial, the trial court also invalidated Kenton's power of attorney and the deed transferring the family home out of the trust, in part, because dad executed the transfer deed individually rather than as trustee.

After trial, the court determined that the last act for which dad had capacity was the amended he executed after mom died, equalizing the kids' interests, relying heavily on the estate planner's testimony. The court also found that Kenton had unduly influenced dad to execute the power of attorney and transfer deed, and gift him the stock, and that such acts constituted financial elder abuse. The court did not make a separate finding of bad faith, but awarded double damages Section 859 for Kenton's wrongful taking. Kenton appealed.

KEY ISSUE:

Whether a finding of elder abuse, without bad faith, is sufficient to award double damages under Section 859.

RESULT:

The appellate court affirmed, finding both that the evidence supported the trial court's finding of elder financial abuse by undue influence and that the court's finding that Kenton had "committed elder…financial abuse" sufficient without a separate finding of bad faith, rejecting *Levin v. Winston-Levin* (2019) 39 Cal.App.5th 1025.

Attorneys' Fees

People ex rel. Becerra v. Shine (2020) 46 Cal. App. 5th 288

Under California Government Code § 12598, the California Attorney General may recover actual costs and reasonable attorneys' fees in a charitable trust action without any findings by a trial court as to the degree of success in litigation.

BACKGROUND:

The attorney general of California filed a petition on behalf of a charitable trust against William Shine, a trustee, for breach of fiduciary duty, an accounting, and removal. The attorney general alleged that Shine failed to fulfill his fiduciary duty for several reasons, one being that he failed to create a charitable foundation, the Livewire Lindskog Foundation, as instructed by the trust documents.

The trial court found that Shine "violated most, if not all of his fiduciary responsibilities and duties." Its statement of decision noted that Shine "allowed improper tax returns to be filed, allowed a Subchapter S corporation status to be lost (by failing to follow prudent legal advice) and…used Trust funds to loan money to friends." As a result of Shine's conduct, the Trust was "damaged significantly." Shine was removed as trustee and ordered to reimburse the Trust in the amount of
$1,421,598 The trial court granted in part the Attorney General's motion under California Government Code § 12598 for reimbursement of attorney fees and costs in the amount of $1,654,083.65.

Shine appealed the award of costs. While he conceded the award was mandatory, he contended that Government Code § 12598 requires only reasonable fees to be awarded, which "'requires courts to appraise the fee claimant's goals and results in the litigation." Because the trial court did not consider the extent of success in the litigation, Shine contended the award was an abuse of discretion. *Id.*

KEY ISSUE:

Whether Government Code § 12598 requires that trial courts make specific findings concerning the results of the litigation in order to award reasonable attorneys' fees to the California attorney general in a charitable trust action.

RESULT:

The Court of Appeal affirmed. Examining the statute and legislative history, it held that Government Code § 12598 does not require trial courts to make findings about the extent of success in litigation when awarding reasonable attorneys' fees to the

attorney general. Therefore, the trial court's statement of decision was proper, despite the lack of analysis of the attorney general's success in litigation. Moreover, the Court of Appeal further explained held the amount of attorneys' fee award was not an abuse of discretion, even though the attorney general only won on7 of 12 causes of action because succeeded in removing Shine as trustee, in proving some of his conduct was grossly negligent, and correcting a breach of trust.

Conservatorship of Brokken (2021) 2021 S.O.S. 1081

Attorney fees are not available under Probate Code §2640.1 when a conservatorship proceeding is resolved without a conservator's appointment.

BACKGROUND:

Mom's adult children sought conservatorship over her, which she resisted. The parties settled the dispute without the appointment of a conservator, and the children reserved the ability to have their attorney's fees approved by the court. The court awarded fees. Mom appealed.

KEY ISSUE:

Whether attorney fees can be awarded under Probate Code *§2640.1 when no conservator is appointed.*

RESULT:

The Court of Appeal overturned. Attorney fees may not be awarded to a petitioning party under Probate Code *§2640.1* when no conservator is appointed.

Standing to Contest

Barefoot v. Jennings (2020) 8 Cal. 5th 822

A former beneficiary of a trust whose interest in the trust was eliminated by an amendment has standing to challenge the amendment in the probate court.

BACKGROUND:

Joan Lee Maynord and her deceased husband established the Maynord Family Trust. Joan served as trustee after her husband died in 1993. From 2013 to 2016, Joan amended and restated the Trust eight times. As a result, one child, Shana Wren, obtained a large share of the Trust and was named successor trustee.

Plaintiff Joan Barefoot filed a petition to invalidate the amendments to the Trust after her mother died in August 2016. Plaintiff was a beneficiary of the Trust and successor trustee before she was eliminated by the questioned amendments.
She alleged her mother was incompetent to make the amendments or that the amendments were products of fraud and undue influence. Defendants moved to dismiss under section 17200 and 17202, alleging that plaintiff lacked standing because she was neither a beneficiary not a trustee. The lower court agreed and dismissed the petition for lack of standing. Then, a Court of Appeal affirmed.

KEY ISSUE:

Whether a party has standing to contend that is amendments to the trust are invalid when the same amendments left it without an interest in a trust estate.

RESULT:

The Supreme Court reversed, and held that a party eliminated by a trust amendment it alleges are products of incompetence, undue influence and fraud has standing if the invalidity of those provisions would render the party a beneficiary of the Trust. The Supreme Court reasoned that Probate Code section 17200 allows beneficiaryto petition the Court to determine its existence, meaning that it contemplates challenges to the validity of the Trust. It further noted that section 24 includes in the definition of a beneficiary those who hold present or future interests. The Court pointedout that if Barefoot's allegations were true, she would be a beneficiary under that definition. Finally, the Court stated that the Probate Code was broadened over the years to allow the probate code to service all controversies pertaining to trust beneficiaries. Analyzing specific sections of the Probate Code and statutory scheme holistically, the Court found that Barefoot had standing.

Conservatorships

Conservatorship of A.E. (2020) 45 Cal.App.5th 277

A trial court's failure to make the requisite finding that the proposed conservatee did not want to attend the hearing on the petition for appointment of conservator, orcould not be produced for the hearing due to medical inability, or that her appearance was likely to cause serious and immediate physiological damage, resulted in a reversal by the appellate court, irrespective of the merits underlying the appointment.

BACKGROUND:

The mother of a 26 year old woman who suffers from autism spectrum disorder filed a petition to be appointed conservator of the person for her daughter so that she could authorize medical treatment, since the daughter had a painful tooth abscess but no dentist would treat her without a court order.

The court investigator's report – much of which was determined to be unfounded or inconclusive – summarized a lengthy history of referrals to child protective services and adult protective services for abuse and neglect. Based, on this, the court investigator recommended that the mother's petition be denied and that the public guardian be appointed as conservator. The record was silent on whether the proposed conservatee was asked if she wanted to attend the hearing or agreed to the proposed public guardian conservatorship. Nevertheless, the trial court appointed the public guardian as conservator. The mother appealed, complaining that there was no testimony under oath, no opportunity for cross- examination, no opportunity to examinethe biological parents, caregivers, or investigators, and that the conservatorship order violates the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.).

KEY ISSUE:

Whether (1) the requirements of Probate Code section 1825 – requiring the in-court presence of the proposed conservatee unless an exception applies – were met, and, (2) if not, whether the failure to make such findings was fatal to the order appointing a conservator.

RESULT:

The Court of Appeal, without addressing the merits of the petitioner's petition or expressing any views regarding the appointment of the public guardian, reversed the decision of the trial court. In so doing, the Court of Appeal explained that presence in court so that the trial judge may see and hear the person is a necessary component of the process, and that a prospective conservatee who suffers

from autism spectrum disorder, regardless of the degree of mental impairment, has due process rights. The Court of Appeal rejected the respondent's argument that there was nothing in the record to indicate that the proposed conservatee desired to attend the hearing and that multiple reports, including the petitioner's petition, suggested that the proposed conservatee's mental and emotional condition made her both unable and unwilling to attend the court hearing. The primary consideration for this rejection was that the record was silent on whether the proposed conservatee was even asked if she wanted to attend the hearing or agreed to the proposed public guardian conservatorship. And, since Prob. Code, § 1825, subd. (a), requires that the proposed conservatee be produced at the hearing on the guardianship petition unless certain exceptions are met, the Court of Appeal, without getting to the merits, reversed the decision of the trial court and remanded for further proceedings.

Conservatorship of E.B. (2020) 45 Cal.App.5th 986

Although there is no explicit constitutional right not to testify against oneself in conservatorship trials, nor does the LPS Act create a statutory right similar to the not guilty by reason of insanity ("NGI") statute, compelling a proposed LPS conservatee to testify at his trial thereon violated his constitutional rights under the Equal Protection Clause of the California and United States Constitutions.

BACKGROUND:

A proposed conservatee – a schizophrenic man – in an LPS conservatorship proceeding was called to testify at trial over his objection. The public guardian had two other witnesses who were familiar with the proposed conservatee and painted a vivid picture of someone who was unable to care for himself due to his mental illness.

Ultimately, the trial court appointed the Public Guardian of Contra Costa County as conservator over the man. The proposed conservatee appealed based on the sole argument that compelling him to testify violated his constitutional rights under the Equal Protection Clause.

KEY ISSUE:

Whether (1) a proposed LPS conservatee who objects to being called to testify is similarly situated – for the for purposes of the law which does not expressly grant him the right to refuse to testify – and (2) whether the state has justified the disparate treatment toward the proposed LPS conservatee relative to others in civil commitment proceedings not required to testify.

RESULT:

The Court of Appeal affirmed the decision of the trial court to appoint the Public Guardian as LPS conservator. Notably, however, the Court of Appeal found that the trial court erred in compelling the proposed conservatee to testify over his objection because it determined that doing so violated his rights under the Equal Protection Clause. In arriving at this conclusion, the Court explained that, for the purposes of challenging the law that does not expressly grant the proposed LPS conservatee a rightto refuse to testify, the proposed conservatee was nevertheless similarly situated with those in NGI extension proceedings and those subject to commitment proceedings in the context of sexually violent predators ("SVPs") and mentally disordered offenders ("MDOs"). Specifically, the Court explained that the purpose for all of these proceedingsis to is to protect the public from people found dangerous to others and who need treatment for a mental disorder. The court also found that the Public Guardian was unable to show that the proposed LPS conservatee's compelled testimony was any more necessary in the proceeding to declare appellant an LPS conservatee than it would havebeen in other types of civil commitment proceedings involving NGIs, SVPs, or MDOs.

Notwithstanding this determination, the Court of Appeal found that compelling the proposed LPS conservatee to testify was harmless error since there were two other witnesses who were familiar with the proposed conservatee and painted a vivid pictureof someone who was unable to care for himself due to his mental illness. Therefore, the Court of Appeal affirmed the trial court's judgment appointing the Public Guardian as LPS conservator.

Conservatorship of the Person of O.B. (2020) 9 Cal.5th 989

Appellate review must examine a claim of insufficient evidence through the lens of the applicable standard of proof, and where that standard of proof is clear and convincing the court must find that the record substantially evidences facts a reasonable factfinder could have found highly probably to be true.

BACKGROUND:

O.B., a young woman with autism, was placed in a temporary conservatorship. She appealed, claiming that that the evidence was insufficient to satisfy the applicable clear and convincing standard to justify conservatorship.

KEY ISSUE:

Resolves a split of California authority as to whether an appellate court in examining a claim of insufficient evidence must apply or may disregard the clear and convincing standard of proof, which requires greater certainty than a preponderance of the evidence standard.

RESULT:

Reversed and remanded. Appellate review of the sufficiency of the evidence must account for the applicable standard of proof, and where that standard is clear and convincing the appellate court must answer the question of whether the appellate record as a whole contains substantial evidence from which a reasonable factfinder could have found it highly probable that the fact was true.

Conservatorship of the Person of S.A. (Cal. Ct. App. Nov. 3, 2020) (Cite as B302038)

There is no statutory requirement that the court make an express finding of a conservatee's decisional incapacity if substantial evidence exists to support the need for involuntary medication, and psychologists may opine on the need for medication.

BACKGROUND:

S.A.'s mother, Y.A., petitioned to be reappointed as S.A.'s conservator of the person pursuant to the Lanterman-Petris-Short Act, and to have the power to force S.A. to take psychotropic medications against her will. S.A. objected. Two witnesses testified at trial, Dr. Alete Arom, a psychologist, and S.A. Dr. Arom testified that S.A had symptoms of schizophrenia, that she believed her true name was something other than S.A., that she denied having a mental illness and instead believed she had anemia, that she believed her parents were movie stars Michelle Pfeiffer and Michael Keaton, that she denied her Indian ethnic heritage, and that she denied the need to take medication. Dr. Arom opined that if S.A. were not under conservatorship she would not have a viable plan to provide for her own food, clothing, and shelter. S.A. did not object to any of Dr. Arom's testimony. S.A. also testified, confirming to the court Dr. Arom's views. The court found beyond a reasonable doubt that S.A. remained gravely disabled, reappointed Y.A. as S.A.'s conservator and granted Y.A. authority to require her daughter to take psychotropic medications. S.A. appealed.

KEY ISSUE:

Whether the court may order involuntary medication if clear and convincing evidence shows the conservatee is incompetent to give or withhold informed consent.

RESULT:

Affirmed. Sufficient evidence supported the court's findings that S.A. was gravely

disabled, and that S.A. was unable to make informed treatment decisions. To determine if a conservatee is incompetent to give or withhold informed medical consent, the court considers whether the conservatee lacks mental capacity to understand the nature of the medical problem, the proposed treatment, and its attendant risks. There is no statutory requirement that the court make an express finding of decisional incapacity if substantial evidence exists to support the need for involuntary medication. Dr. Arom and S.A.'s testimony demonstrated that S.A. lacked insight about her mental illness, would not take medication without the support of a conservator, could not provide for herself without a conservatorship and without medication, and could not provide shelter for herself without a conservatorship. Dr. Arom's lack of medical training as a psychologist, and her inability to prescribe medications herself did not preclude her from rendering an opinion on whether S.A. could understand her mental illness and medication. Lastly, Dr. Arom's opinions were not speculation and were based on her own observations of S.A.

Conservatorship of Navarrete, 58 Cal.App.5th 1018 (Cal. Ct. App. Dec. 4, 2020)

The court lacks authority to require a conservatee to receive a visitor against her will and over the objection of the conservator.

BACKGROUND:

Anna Navarrete, a 33-year-old woman with cerebral palsy, a developmental speech and language disorder, and an anxiety adjustment order, was the subject of competing conservatorship petitions filed by her mother one hand, and her father and older brother on the other hand. At trial, Navarrete's therapist, mother, and younger brother testified that Navarrete told them that her father sexually assaulted and raped her, and that she fears her father. The father testified and denied the accusations. The court granted mother's petition to be appointed Navarrete's conservator, but granted father monitored visitation. Despite acknowledging Navarrete's genuine fear for her father, the court concluded it would be in Navarrete's best interests to have joint counseling sessions with her father to allow reconciliation in the event that the accusations of sexual assault and rape were not true. Navarrete, her conservator, her attorney, and her therapist had objected to visitation, and appealed.

KEY ISSUE:

Whether an adult conservatee's disability limits their ability to refuse visitors.

RESULT:

Reversed. The establishment of a conservatorship does not divest the conservatee of her autonomy and personal rights to receive visitors, telephone calls, and personal mail. The public policy of maintaining a conservatee's personal agency as much as possible is so strong that the court may intervene on a conservatee's behalf to ensure that she may exercise her personal rights, and even direct a conservator to allow visitors at the conservatee's request. Conversely, the court does not have the power to force an unwanted visitor on the conservatee. An adult conservatee's disability does not put her in the legal position of a minor; thus, the court may not compel visitation over the objection of the conservatee and her conservator.

Intent of the Testator/Settlor

Wilkin v. Nelson (2020) 45 Cal. App. 5th 802

Unambiguous pour-over will could be reformed when clear and convincing evidence showed that testator intended only to include specific property in the will.

BACKGROUND:

Hanako Nelson, married to William, left a separate property rental home to Gary and Jay Wilkin, her sons from a prior marriage, in a trust. She also executed a pour-over will granting the residue of her estate to a trustee for administration. Upon her death, Gary filed a probate petition requesting that Hanako's all separate and community property assets be transferred to her trust, citing provisions in her pour- over will. William then filed a petition seeking reformation of the pour-over will to confirm Hanako's intent to transfer only a separate property rental home into the trust.

After an evidentiary hearing, the trial court found clear and convincing evidence supported reformation of the will, given the numerous facts suggesting Hanako only planned to leave the rental house to Gary and Jay. The trial court reformed the will and gave Hanako's other separate property to William.

KEY ISSUE:

Whether clear and convincing evidence supported reformation of the will.

RESULT:

The Court of Appeal affirmed. It held that clear and convincing evidence supported the reformation of the will to ensure that only the separate rental home wentto Hanako's sons and the rest of her estate went to William. The Court of Appeal appliedthe two-step test laid out in *Estate of Duke* (2015) 61 Cal. 4th 871 ("Dukes"), brushingaside objections from Gary that the test only applies to specific devises and not the general pour-over will at issue. *Duke*, the Court of Appeal explained, permits reformation of an unambiguous will if (1) clear and convincing evidence shows a mistake at the time the will is drafted and (2) the evidence shows the testator's actual specific intent. The Court of Appeal agreed that the evidence that Hanako never discussed placing other assets besides the rental house in the trust for her sons and hermentioning that she intended to do further joint estate planning for the remainder of her assets was clear and convincing evidence of her intent. Therefore, reformation was proper.

Sachs v. Sachs (2020) 44 Cal.App.5th 59

A trust beneficiary's e-mails to the trustee stating that distributions were on the beneficiary's "record" constituted sufficient evidence of acknowledgment in writing under Prob. Code, § 21135, subd. (a)(3), of gifts in satisfaction of an at-death transferbecause the trustee's testimony provided sufficient authentication of the decedent'shandwritten record of lifetime distributions.

BACKGROUND:

The decedent settled a trust in 1980 which provided that most of the trust corpus would be distributed to his son and daughter, his only children. Years later, the decedent began to keep track of money distributed to his children on papers he referredto as the "Permanent Record." When a child asked for money, the decedent would tell the child that the distribution would be reflected on the Permanent Record.

In 2013, after experiencing cognitive problems due to a stroke, the decedent hireda bookkeeper to manage his finances. A few months later, the decedent resigned as trustee and his daughter became successor trustee. Thereafter, the bookkeeper advised the children that expenditures for the decedent's residential care and payments to the children were depleting the trust at a rapid rate, but the son nevertheless continued to ask his sister for distributions from the trust, which caused friction between the siblings. In a series of e-mails, the son sought to assure
his sister by repeatedly stating that the distributions would go on his record. The following year, the daughter learned that her brother was contending the Permanent Record did not exist or that he was not bound by it. By then, the decedent's mental condition had deteriorated to such an extent that he could not be asked about his intention in creating the Permanent Record.

After the decedent's death, his daughter filed a petition for instructions to equalize the distribution of assets from the trust, claiming that the disparity in lifetime distributions in favor of her brother should be deducted from his distributive share of the trust. The trial court granted the petition, and found that the son received $451,027more than his sister in lifetime distributions. The son appealed.

KEY ISSUE:

Whether (1) an unsigned ledger is sufficient to establish the writing requirement under Probate Code section 21135(a)(2) which concerns lifetime gifts being treated as a satisfaction of an at-death transfer; and (2) whether the son's series of emails wherein he sought to assure is sister by explaining that the distribution would "go on his record", were sufficient to establish an acknowledgment that lifetime transfers were in satisfaction of an at-death transfer.

RESULT:

The Court of Appeal affirmed the decision of the trial court. In rejecting the son's argument that the decedent's "Permanent Record" was not properly authenticated as a writing, the Court explained, citing Evid. Code § 1410, that there is no particular requirement for how a writing is authenticated. The appellate court likewise noted that the daughter's testimony that she found the Permanent Record among her father's papers, and that the record is in her father's handwriting was sufficient, and therefore the trial court did not abuse its discretion in determining that the Permanent Record satisfied the writing requirement of Probate Code section 21135(a)(2).

The Court likewise rejected the son's argument that his emails did not constitute an "acknowledgment" under Probate Code section 21135(a)(3), which provides for the allowance of a transferee to acknowledge – in writing – that a lifetime gift is in satisfaction of an at-death transfer. The Court reasoned that the statement "it goes on my record" was made in the context of the son's request for distributions from the trust, and, given the context, the trial court could reasonably conclude the e- mails constitutea written acknowledgement that the distributions are advancements.

Fiduciary Duties

Donkin v. Donkin (2020) 47 Cal.App.5th 469

A self-represented trustee does not engage in the unauthorized practice of the law whenhe or she petitions the court for instructions regarding the interpretation of the trust.

BACKGROUND:

Co-trustees of a trust disagreed with the beneficiaries about whether the trust was a continuing discretionary spendthrift trust, and, in a proceeding in which they represented themselves, filed a petition for instructions with the court seeking clarification on this issue. The beneficiaries argued that such self-representation constituted an unauthorized practice of law.

The beneficiaries sought to obtain their trust distributions through a petition for surcharge and to account, which the co-trustees opposed, arguing that the beneficiaries' petition was barred by the statute of limitations under Probate Code section 16061.8.

The trial court concluded that the trust was not a continuing discretionary spendthrift trust. The trial court further concluded that the beneficiaries' effortsseeking such distribution via a petition for surcharge and to account were not barred by the statute of limitations in Probate Code section 16061.8 because such efforts did not constitute an action "contest[ing]" the trust. The trial court, however, rejected the beneficiaries' contention that the co-trustees engaged in the unauthorized practice of the law. The co-trustees appealed the trial court's findings relative to their petition for instructions and the beneficiaries' petition for surcharge and to account.

KEY ISSUE:

Whether a self-represented trustee engages in the unauthorized practice of the law when he or she petitions the court for instructions regarding the interpretation of the trust.

RESULT:

The Court of Appeal affirmed. In so doing, it distinguished its decision in *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545 that, "[a] nonattorney trustee who represents [a] trust in court is representing and affecting the interests of the beneficiary and is thus engaged in the unauthorized practice of law." *Id.* at 549. In the instant case, the Courtof Appeal pointed out the conclusion in *Ziegler* that the trustee could not represent himself in prosecuting the trust's lawsuit against a third party because, "in this capacity such trustee would be representing interests of others and would therefore be engagedin the unauthorized practice of law." *Id.* at 548.

Conversely, the Court of Appeal analogized to *Finkbeiner v. Gavid* (2006) 136 Cal.App.4th 1417 where the court found that a trustee did not engage in the unauthorized practice of the law by representing herself in the filing of a petition to modify and terminate the trust consistent with her obligation to notify the court if she felt maintaining an ineffective trust was wasteful to the trust estate. The Court of Appeal explained that, the instant case, as in *Finkbeiner*, is between trustees and trust beneficiaries in the context of probate proceedings, not between trustees and a third party in nonprobate litigation. Therefore, since the co-trustees were not acting on behalf of the beneficiaries, they did not engage in the unauthorized practice of the law.

Notice/Due Process

Roth v. Jelley (2020) 45 Cal. App. 5th 655

A trust beneficiary's contingent future interest in the trust's residue entitled himto notice and an opportunity to be heard on a petition eliminating that interest, even when a thirty year-old judgment came from that petition.

BACKGROUND:

McKie Roth Sr. and his first wife had three children. McKie Sr. created a trust in his will for the benefit of his second wife, Yvonne, during her life and a testamentary power of appointment over the remainder. The will provided distribution if Yvonne did not exercise her appointment power: a quarter share to each of McKie Sr.'s three children and Yvonne's one child. The will also provided that if an adult child not surviveYvonne, the child's surviving issue would that their parent's share per stirpes.

On the death of their father, McKie Sr.'s children raised claims against the estate. The children, Yvonne, and the estate's executor settled and went to the probatecourt to obtain approval of the settlement and modify the will in 1991. The result of the decree from the probate, incorporating the settlement, permitted the distribution of thetrust entirely to Yvonne's son in the event she did not exercise her appointment power.McKie Sr.'s children disclaimed their interest in the estate and McKie Sr.'s grandchildren were thus eliminated from the distribution scheme. The grandchildren were not given prior notice of the probate court proceeding.

McKie Jr.'s son, Mark, sued in 2016 after Yvonne failed to exercise her appointment power. He petitioned to be recognized as a beneficiary and to impose a constructive trust on the residue of the estate. He claimed the decree was void because he never received notice of the 1991 proceeding in which he was interested and divestedof his interest in the estate. At a hearing, the trial court ruled against Mark. It arguedthat because his father received his interest under the trust and then disclaimed it, Mark's contingent remainder did not vest. It further noted that his interest was too speculative to necessitate personal notice because he did not have property interest at the time.

KEY ISSUE:

Whether a beneficiary had a property interest in the testamentary trust created by his grandfather such that he had a due process right to notice and opportunity to be heard before the probate court could enter a decree that eliminated his interest in the trust.

RESULT:

The Court of Appeal reversed, and held that Mark was entitled to notice. First, it pointed out that due process under the 14th Amendment to the U.S. Constitution requires reasonable notice of any proceeding affecting a property interest, statutory requirements notwithstanding. Then, it determined Mark had a property interest. Although subject to divestment by power of appointment, Mark had a contingent future interest in the remainder of the trust created by the will. Next, the Court found that Mark's interest was adversely affected by the 1991 decree. It stated that although McKie Jr. signed a settlement agreement disclaiming his interest, the agreement did not alter the will nor could it bind Mark, who was not party to it. McKie Jr.'s interest could not be vested by means of the settlement agreement in order to divest Mark of it.Therefore, because Mark was interested in the hearing and his contact information wasreadily attainable, he was entitled to notice. Without proper notice, his interest in the Trust could not be extinguished and the 1991 decree was invalid.

Powers of Appointment

Tubbs v. Berkowitz (2020) 47 Cal.App.5th 548

A trustee may exercise a general power of appointment to transfer assets to himself, even to the detriment of contingent beneficiaries, when authorized by the termsof a trust.

BACKGROUND:

The Berkowitz Family Trust was founded by Harry Berkowitz and his wife. The Trust, upon the death of one spouse, called for the Trust to be split into a survivor's trust and an irrevocable marital trust. The Trust instructed that the marital trust receive the deceased spouse's separate property and share of the community estate. The Trust contemplated that assets from both the survivor's trust and marital trusts ultimately would pass to the couple's children, Janice Tubbs and her brother, and grandchildren.

The Trust also provided the surviving spouse with a general power of appointment over the marital trust. Under that power of appointment, the surviving spouse could appoint the corpus of the marital trust to anyone. After the death of his wife, Berkowitz exercised the power of appointment and transferred all assets to himself, effectively disinheriting his children and grandchildren.

Janice filed a petition requesting the court hold that Berkowitz could not use a power of appointment to transfer assets to himself, given his fiduciary obligations as trustee. Berkowitz filed a motion for summary judgment, contending he had the right to transfer all assets to himself because the power of appointment allowed him to act innon-fiduciary capacity. The court agreed and granted summary judgment.

Janice appealed. Janice argued that the lower court erred in ruling that Berkowitz had not violated his implied covenant of good faith as successor trustee by transferring assets to himself and by acting contrary to his wife's intent that her separate property and her share of the couple's community property pass to her childrenand grandchildren.

KEY ISSUE:

Whether Berkowitz, as trustee, could transfer assets to himself from the irrevocable marital trust under the power of appointment to the detriment of contingent beneficiaries.

RESULT:

The Court of Appeal affirmed the grant of the motion for summary judgment. The Court of Appeal held that when a power of appointment enables a person to act ina non-fiduciary capacity, a trustee does not breach its fiduciary duties by taking an act expressly authorized by the trust. The Court of Appeal explained that Probate Code section 610 (f) enables a donee of a general power of appointment to act in a "non-fiduciary capacity." The court also pointed out that Probate Code section 610 (f) allows the power to be exercised to the detriment of other beneficiaries. Furthermore, the Court of Appeal found no authority to suggest that a donee under general power of appointment cannot exercise that power if the donee is also the trustee of an irrevocabletrust. Thus, since nothing in the law prohibits the exercise of the power, the exercise ofthe power by Berkowitz, expressly granted by the Trust, was proper.

Rallo v. O'Brien (2020) 52 Cal.App.5th 997

Decedent's general disinheritance clause excluding any other descendants or heirs was sufficient to disinherit Decedent's secret scions who sought to claim an intestate share as omitted children solely based on Decedent's lack of knowledge of theirexistence.

BACKGROUND:

Decedent's adult children sought an intestate share of Decedent's estate as omitted heirs, claiming that had Decedent known of their existence he would not have omitted them. Trustee demurred, relying on the trust's explicit disinheritance of any person who claims to be a descendent or heir.

Trial court sustained the demurrers without leave to amend. The children appealed.

KEY ISSUE:

Whether establishing that a decedent was unaware of the child's existence is sufficient to qualify as an omitted heir under Probate Code section 21622, and whether section 21622 precludes disinheritance by a general disinheritance clause.

RESULT:

Affirmed. An omitted child must demonstrate both that: (1) the decedent was unaware of their existence (or mistaken about their death); and (2) the decedent failed to provide for the unknown child *solely* because of that lack of awareness (or mistaken belief). A general disinheritance clause is sufficient to establish that the failure to provide was not "solely" due to the lack of awareness.

Exercise of a Specific Power of Appointment

Estate of Eimers, (2020) 49 Cal. App. 5th 97

A court will not reform a failed attempt to exercise a power of appointment that does not comply with the specific requirements set forth in that power of appointment.

BACKGROUND:

Decedent was a beneficiary of a family trust that included a general power of appointment. The power of appointment expressly required any beneficiary wishing to exercise the power to refer specifically to the power of appointment in exercising it.

In a holographic will, Decedent wrote only that he leaves his shares in the family trust to his beneficiaries. However, he made no specific reference to his exercise of the power of appointment.

Upon Decedent's passing, the trustee of the trust sought instruction as to Decedent's failure to comply with the express requirements of the power of appointment. The beneficiaries under his holographic will responded by petitioning to reform the holographic will to include a specific reference to the power of appointment, arguing Decedent's intent was clear despite his failure to comply with trust requirements. The trustee demurred.

The trial court sustained the trustee's demurrer to the petition without leave to amend.

KEY ISSUE:

Whether a court may reform a will to include specific reference to exercise a power of appointment where the decedent's intent is clear but his will contains no such reference.

RESULT:

Affirmed. In contrasting the holding in *Estate of Duke*, 61 Cal. 4th 871 (2015), where the court found that a will may be reformed when clear and convincing evidence establishes that a testator erred in his expression of intent and his true intent can be established, the court held that "omission of a 'specific reference' cannot be cured by amendment because to do so would undercut the express provisions of [Cal. Prob. Code] sections 630, 631, and 632."

Personal Jurisdiction

Buskirk v. Buskirk, (2020) 53 Cal.App.5th 523

BACKGROUND:

Petitioner brought a trust action against his elderly mother, sisters and uncle. The trust had been executed in California, was subject to California law, had been administered in California from at least 2005 through 2016, and formerly held ownership interests in California properties. The sisters, petitioner alleged, wrongfullytook their mother from California, where she had been a longtime resident, and absconded with her to their new home state, Idaho, in 2016.

After the move, mom purportedly amended the trust to remove petitioner as a beneficiary, registered the trust in Idaho, engaged in transactions to extinguish the trust's interests in California properties, moved the trust's assets to Idaho, but also initiated four different lawsuits in California.

In response to petitioner's petition respondents moved to quash for lack of personal jurisdiction and "mandatory" venue in Idaho, which motion the trial court granted.

KEY ISSUE:

What standard applies to the application of personal jurisdiction in trust proceedings.

RESULT:

Reversed and remanded. The appellate court found that personal jurisdiction in trust proceedings works the same as in civil matters, and that California courts may exercise jurisdiction on any basis consistent with the state and federal constitutions, namely, purposeful availment, relatedness, and fairness, all of which had been satisfied.

Methods of Trust Revocation

Cundall v. Mitchell-Clyde, 51 Cal. App. 5th 571 (2020)

A trust revocable by delivering a writing signed by the decedent and the drafting attorney may also be revoked by delivering to the trustee a signed revocation from the settlor under Probate Code section 15401(a) where the written condition for revocation is non-exclusive.

BACKGROUND:

Decedent executed a trust stating it may be revoked by delivering a writing signed by the decedent and the drafting attorney. Grantor later engaged another attorney and executed a revocation of the trust, which he delivered to himself as trustee,and new estate planning documents. The original drafting attorney was not involved in the new documents and did not sign the revocation of the first trust.

After decedent deceased, the sole beneficiary of the original trust petitioned for a determination that first trust had not been validly revoked. The beneficiaries of the new trust objected and cross-petitioned for a determination that the original trust hadbeen properly revoked and the new trust was the effective instrument.

The trial court, after a 23 day hearing, found the revocation effective and gave effect to the new trust.

KEY ISSUE:

Whether the decedent's written revocation and delivery without the sign-off from the original drafting attorney constituted a valid revocation.

RESULT:

Affirmed. Probate Code section 15401(a) provides two alternative methods for revocation: (1) compliance with a method of revocation provided by the trust; or (2) delivering to the trustee during the settlor's lifetime a writing signed the settlor or any other person holding the power of revocation. Unless a trust states that compliance with the method of revocation provided in the document is the "exclusive" method, compliance with the probate code is sufficient to effectuate a revocation.

Tortious Interference with Expected Inheritance

Gomez v. Smith (2020) 2020 WL 5640229

A claim for tortious interference stood where decedent's daughter and agent-in-fact was found to have intentionally interfered with her father's efforts to amend his trust to provide a life estate for his new wife.

BACKGROUND:

Frank and Louise Gomez reunited and married more than 60 years after Frank broke off their first engagement upon being deployed to serve in the Korean War. Frank's children from his intervening relationship, Tammy and Tim, did not approve of his marriage to Gomez. After Frank fell ill, he tried to create a new living trust providing a life estate for Louise. When the lawyer and his paralegal came to Frank's home to execute the amended trust, Tammy, Frank's attorney-in-fact, turned them away, saying it wasn't Frank's decision to make. Frank died in the early hours the following morning.

Louise sued Tammy and her brother for intentional interference with expected inheritance, intentional infliction of emotional distress, and elder abuse. Tammy cross-complained for recovery of trust property. The trial court found in favor of Louise on her intentional interference claim, in favor of Tammy and her brother on Louise's other claims, and against Tammy on her cross-complaint. Tammy appealed

KEY ISSUE:

Whether Tammy's actions satisfied the six elements of an intentionalinterference with expected inheritance claim: (1) expectancy of an inheritance; (2) causation; (3) intent – i.e., defendant had knowledge of the expectancy and deliberatelyinterfered with it; (4) interference by independently tortious means - i.e., underlying conduct must be wrong for some reason other than the fact of the interference itself; (5)damages; and (6) the independently tortious conduct must have been directed at someone other than the plaintiff – i.e. the decedent.

RESULT:

Affirmed. Tammy, Frank's attorney-in-fact, breached the fiduciary duty she owed to Frank in interfering with his estate planning efforts (interference by independently tortious means) at a time when she knew of Frank's plans to provide forLouise (Louise's expectancy) and she prevented the trust amendment by her interference with the lawyer, which caused Louise to not receive the benefit Frank hadintended for her.

Quiet Title and Community Property

Trenk v. Soheili, 58 Cal.App.5th 1033 (Cal. Ct. App. Dec. 21, 2020)

A trust deed related to a parcel of community property may be voided by a non-signatory spouse.

BACKGROUND:

Moreteza Sohyly filed suit against Joseph Trenk for malpractice, resulting in a settlement whereby Joseph agreed to pay $100,000 and executed a promissory note and a trust deed on the property to secure the obligation. Sohyly's sister, Maryam Soheili, was designated as the beneficiary of the trust deed. After Joseph stopped regular payments on the note after 2003, Sohyly began nonjudicial foreclosure proceedings in 2018. Joseph Trenk and his wife filed action to clear title to their house, alleging that the trust deed was no longer enforceable. The trial court quieted title in the property in favor of the Trenks, ruling that both the statute of limitations and the Marketable Record Title Act barred enforcement of the trust deed. Sohyly appealed.

KEY ISSUE:

How to properly structure and enforce a trust deed.

RESULT:

The Court of Appeal held that a power of sale in a trust deed is enforceable even if the statute of limitations has run on the underlying obligation. In this case, because the trust deed did not state the last date for payment under the promissory note, under Civil Code section 882.020, subdivision (a)(2), appellants would have 60 years to exercise the power of sale in the trust deed. However, the court held that the power of sale is not enforceable for another reason. The court explained that the property presumptively is community property, appellants did not rebut that presumption at trial, and because Dinah Trenk, Joseph's wife, did not execute the trust deed, she has the power to void it. Accordingly, the court affirmed the judgment.

Jurisdiction and Venue

Capra v. Capra, 58 Cal.App.5th 1072 (Cal. Ct. App. Dec. 22, 2020)

The trial court improperly dismissed for lack of exclusive jurisdiction of the probate court where the decedent's trust no longer held the property in dispute and his probate had closed in another county 27 years ago.

BACKGROUND:

Frank and Lucille Capra owned a cabin on federal land in Mono County, along with a Forest Service use permit. They created the Capra Family Trust ("Trust") for the benefit of their three children, Frank Jr., Lucille Jr., and Thomas. The cabin was not placed in the Trust. Following the settlors' deaths the three became co-trustees and probated Frank Sr.'s estate in Riverside County. As part of the order of final distribution in 1993, the cabin and permit were distributed to the Trust. To comply with Forest Service regulations only one trustee could be named on the permit, and the co-trustees agreed to name Thomas because he resided in Los Angeles County and Lucille resided outside of California. Until 2015, all generations of the Capra family continued to use the cabin recreationally and shared expenses. In September 2015, Thomas took sole possession of the cabin and closed and emptied the bank account used for cabin expenses. Lucille filed an action under Probate Code sections 850 and 17200 in Los Angeles County but, after Thomas threatened to move for sanctions, stipulated to transfer the case to Mono County. Thereafter, the Mono County trial court sustained Thomas' third demurrer, holding that it did not have jurisdiction because Frank's estate was probated in Riverside County Superior Court, which had exclusive jurisdiction under Probate Code section 17000, and dismissed the action.

KEY ISSUE:

Jurisdiction and venue are to be determined based upon the appropriate court's in rem jurisdiction if dealing with land and venue where the principal place of administration is if no land issue.

RESULT:

The appellate court reversed. Mono County trial court has fundamental jurisdiction over the parties and subject matter. Frank Sr.'s probate in Riverside County distributed the cabin to the Trust and closed 27 years ago, and that court did not retain any jurisdiction. Further, jurisdiction under Probate Code section 1700 is exclusive only against other departments in the same county; whereas county selection is governed by venue rules. Because the pleadings are ambiguous, the appellate court remanded for a factual determination of whether the action is one over land, which must be brought where the land is located, or an action challenging the internal affairs of a trust, which

must be brought at the principal place of administration.

Fraudulent Transfers
Aghaian v. Minassian, 59 Cal.App.5th 447 (Cal. Ct. App. Dec. 31, 2020)

A sufficiently plead cause of action for fraudulent transfer will withstand demurrer.

BACKGROUND:

Plaintiffs, trustees and beneficiaries of a trust established in 1982 by their now deceased parents, filed suit against Alice, Shahen, and Arthur Minassian, asserting four causes of action arising out of alleged fraudulent transfers. The trial court sustained defendants' demurrers to two causes of action and plaintiffs voluntarily dismissed the remaining causes of action. Plaintiffs appealed.

KEY ISSUE:

What is required to sufficiently plead a fraudulent transfer claim?

RESULT:

The Court of Appeal reversed, holding that plaintiffs pleaded facts sufficient to constitute a fraudulent transfer cause of action under Civil Code section 3439.04, subdivision (a)(1). In this case, plaintiffs alleged that Shahen made the subject transfers with an actual intent to hinder, delay or defraud any creditor of the debtor within the meaning of the Uniform Voidable Transactions Act, and alleged with particularity the existence of several badges of fraud. Furthermore, the litigation privilege does not bar plaintiffs' cause of action. In regard to plaintiffs' third cause of action against Arthur for aiding and abetting Shahen's fraudulent transfer, the court held that Arthur was not entitled to immunity for his involvement in the sham divorce and fraudulent scheme, and rejected Arthur's argument that he is protected by the litigation privilege; even if plaintiffs had alleged an attorney-client conspiracy, the allegations are sufficient to satisfy the exception to the pre-filing requirement under section 1714.10, subdivision (c); and the disclosed agent is inapplicable in this case.

Property Tax Reassessment

Bohnett v. County of Santa Barbara, 59 Cal.App.5th 1128 (Cal. Ct. App. Jan. 19, 2021) (Case B303520)

In determining whether a change in ownership that requires reassessment of real property has occurred the inquiry is focused on the transfer of the beneficial, or equitable, ownership of the property, not the transfer of legal title.

BACKGROUND:

In 1999, Bernard C. Wehe and Sheila F. Wehe created a family trust into which they transferred their primary residence. The trust provided that upon their deaths, the estate was to be distributed equally among their thirteen children, including Bohnett. Sheila died in 2003. Bernard died in 2008. In 2012, the successor trustee filed a Claim for Reassessment Exclusion for Transfer Between Parent and Child ("Proposition 58 Claim") identifying Sheila and Bernard, as transferors, and the thirteen children, as transferees. Then, in 2013, Bohnett and his wife purchased the property from the trust for $1,030,000, with the sales proceeds distributed equally among the thirteen children, including Bohnett. The County of Santa Barbara concluded that the 2013 sale resulted in a 92.3 percent (i.e., twelve-thirteenths) transfer in ownership and reassessed the property. The Bohnetts appealed.

KEY ISSUE:

Where a family residence was transferred from the cotrustors of a family trust to their children, and one beneficiary purchased his siblings' shares in the trust, was the purchase a parent-child transfer exempt from reassessment for property tax purposes.

RESULT:

The appellate court affirmed. For purposes of determining change in ownership relating to a Proposition 58 claim, the inquiry is focused on transfer of the beneficial or equitable ownership of the property, not the transfer of legal title. The court held that beneficial ownership of the property was transferred to the thirteen children when Bernard died and the trust became irrevocable. Thus, upon Bernard's death, the children received the property's primary economic value and the equitable title in the property, despite legal title remaining with the successor trustee. The subsequent 2013 purchase was, therefore, a transfer of ownership from the children, as sellers, to the Bohnetts, as purchasers. As a sibling-to-sibling transfer, the property was properly reassessed.

Defining Trust Assets -- Stock

Prang v. Amen, 58 Cal.App.5th 246 (Cal. Ct. App. Dec. 7, 2020) (review granted March 17, 2021)

The term "stock" includes all classes of stock for purposes of determining whether a transfer of ownership has occurred.

BACKGROUND:

Super A Foods, Inc. held title to real property in Los Angeles. All of the corporation's voting stock was issued to a Trust. The corporation's non-voting stock was issued to the Trust and other individuals, including non-trust beneficiaries. In 2014, the corporation transferred the real property entirely to the Trust. The county assessor concluded the transfer constituted a change of ownership from the corporation to a trust and reassessed the property value. The Assessment Appeals Board reversed the reassessment. The assessor petitioned for a writ of administrative mandate to vacate the Board's decision, which the trial court granted. The Trust appealed.

KEY ISSUE:

Whether transfer of an asset from a corporation to a trust holding that corporation's voting stock, but not its non-voting stock, triggers reassessment.

RESULT:

The appellate court affirmed. The main issue on appeal was whether the term "stock" in the relevant Revenue and Taxation Code section referred only to voting stock or all classes of stock, including non-voting stock. The court disagreed with the Trust's view that ownership interests in real property held by a corporation should be measured by voting stock alone. The common meaning of stock includes non-voting stock, and the relevant statutory schemes did not use the terms "stock" and "voting stock" interchangeably, as the Trust argued. Moreover, the fact that the general term "stock" includes other subcategories such as voting and non-voting stock did not result in an ambiguity in the term "stock." Rather, it simply showed that the general term included subcategories. Lastly, the court found that the economic interests of the prior owners of the corporation changed as a result of the transfer, supporting the argument for reassessment.

Mediation Result Binding on Non-Participants

Breslin v. Breslin (Cal. Ct. App. Jan. 26, 2021) (cite as 2021 S.O.S. 1404) (vacated and reissued on April 5, 2021)

Beneficiaries who receive notice of court-ordered mediation and fail to participate are bound by the result.

BACKGROUND:

David Breslin was the successor trustee of decedent Don Kirchner's trust dated July 20, 2017, as restated on November 1, 2017. Though Breslin located the restated trust, he could not find the original trust. The restated trust made certain specific gifts and directed the residue of the trust estate to be distributed to persons and charities listed on exhibit A. Breslin could not locate exhibit A but found a document titled "Estate Charities (6/30/2017)" in Kirchner's estate planning binder, and based on this document Breslin filed a petition to be confirmed as successor trustee and to determine the beneficiaries of the trust. Breslin served notice on each of the listed charities. Only three of the twenty-four charities responded to the petition. The court confirmed Breslin as the successor trustee and ordered mediation amongst the interested parties, including Kirchner's intestate heirs and all identified charities. Formal notice of the mediation was given to all interested parties with a warning that any party may be bound by the terms of an agreement reached at mediation and may lose rights as a trust beneficiary if the party does not participate in mediation. Breslin, Kirchner's intestate heirs, and five of the listed charities participated in mediation and reached an agreement that was approved by the court over the objections of certain non-participating charities. The court approved the settlement despite the objections of certain non-participating charities because they had failed to file a response to the underlying petition or participate in mediation, notwithstanding receiving notice of both.

The non-participating charities appealed.

KEY ISSUE:

Whether a party who received notice but fails to participate in court-ordered mediation is bound by the result.

RESULT:

Affirmed. The probate court has statutory authority to order parties into mediation, and to make any orders and take any other action necessary or proper to dispose of the matters presented by the petition. By failing to participate in mediation the Pacific parties waived their right to an evidentiary hearing and forfeited their interest in the proceedings. The trustee did not breach his fiduciary duties by entering into the agreement, even though he benefitted from it, because he provided notice of the

mediation and an opportunity to participate to all interested persons. The Pacific parties may not refuse to participate and later complain about the result.

Dissent. Distinguished from *Smith v. Szeyller* (2019) 31 Cal.App.5th 450 on the grounds that in *Smith* the complaining beneficiary did not have her beneficial interest eviscerated (she still received her gift) and her objections to the court's approval of the settlement were untimely, and took issue with the court effectively forfeiting the non-participating charities' interest for failing to comply with a requirement the testator had not required – e.g. participation in mediation.

Beneficiary Requirements

Manderson-Saleh v. Regents of the University of California, 60 Cal.App.5th 674 (Cal. Ct. App. Feb. 5, 2021)

Evidence of substantial compliance with contingent annuity benefit beneficiary designation requirements may entitle a beneficiary to benefits despite the lack of strict compliance with such requirements.

BACKGROUND:

Daughter of an oncology nurse at the University of California San Diego earned a pension under rules permitting the employee to designate a beneficiary to receive specified monthly pension benefits upon the employee's death. When daughter claimed her rights as the designated beneficiary after mom's death, The Regents of the University of California denied her claim on the ground mom failed to properly identify daughter as beneficiary *before* her death and, therefore, refused to pay the earned pension benefits to daughter. Daughter filed a complaint against the Regents, alleging breach of contract and alternatively sought a writ of mandate to overturn the Regents' decision.

The Regents demurred only to the contract claim, and the court sustained the demurrer without leave to amend. Proceeding on the mandate petition, the court found daughter was not entitled to relief because the Regents had the right to strictly apply its rule that contingent-annuitant pension benefits were conditioned on the Regents receiving a signed beneficiary-election form *before* the employee's death, and the Regents received this form *one week after* mom's death. The court rejected both daughter's proposed interpretation of the rule and her arguments that the beneficiary designation rule had been satisfied when the Regents received mom's election worksheet designating daughter before her death. The court entered a final judgment sustaining the demurrer and denying the mandate petition. Manderson-Saleh challenged both rulings.

KEY ISSUE:

Is strict compliance with California Board of Regents requirements for contingent annuitant pension benefit beneficiary designations required?

RESULT:

Finding the trial court properly sustained the demurrer, the Court of Appeal affirmed in part. However, the trial court erred in denying the mandate petition. "The undisputed evidence establishes mom substantially complied with the Regents' pension rules and the Regents abused its discretion in failing to consider and apply the substantial compliance doctrine in evaluating daughter's claim." The matter was remanded with directions for the trial court to grant mandamus relief, and to issue a writ ordering the Regents to grant daughter's contingent-annuitant pension claim.