Trust, Probate & Conservatorship

Annual Litigation Update

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PROBATE CODE SECTION 859 DOUBLE DAMANGES

Keading v. Keading (2021) 60 Cal.App.5th 1115

An award of double damages under Probate Code 859 for elder financial abuse does notrequire 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 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 familyhome 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 powerof 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 heavilyon 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 separatefinding 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 doubledamages 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 findingthat 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.

CONSERVATORSHIPS

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

Attorney fees are not available under Probate Code §2640.1 when a conservatorshipproceeding 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.

Conservatorship of Norma Farrant (2021) 67 Cal.App.5th 370

A court may order anyone who held a conservatee's assets to account, and an order compelling an accounting and ordering surcharge and sanctions will not be disturbed for failing to allow an evidentiary hearing where no showing of necessity was made.

BACKGROUND:

Conservatee's son served as her attorney-in-fact, during which time he marshalled but failed to account for her rental or social security income, which he retained. Conservatee's sister petitioned to force her brother, attorney-in-fact, to account, which he repeatedly failed to complete fully despite having been ordered to account repeatedly by the trial court. Ultimately, based upon the evidence presented, the court ordered the attorney-in-fact to disgorge the $63,000 in funds he had taken, surcharged him another $63,000, and sanctioned him $121,000 ($1,000 per day his initial accounting was late as he was warned by the court). Attorney-in-fact appealed.

KEY ISSUE:

Whether the trial court had abused its discretion in ordering attorney-in-fact to account by denying the attorney-in-fact's request for an evidentiary hearing in ordering him to account for the conservatee's pension checks and rental income.

RESULT:

Affirmed. Trial court had not abused its discretion in refusing to grant attorney-in-fact an evidentiary hearing where he had failed to specify the factual issues he wishes to litigate, explain why an evidentiary hearing was necessary, identify witnesses who would testify, or otherwise make an offer of proof as to the substance of the evidence he would present.

Conservatorship of the Person of Joanne R., (2021) Cite as B310906

An LPS jury waiver must be voluntary, knowing and intelligent.

BACKGROUND:

Due to her mental illness the court found Joanne gravely disabled and placed her under an LPS conservatorship. When her conservatorship was set for renewal, Joanne objected. On the first day of trial on the renewal the court advised Joanne of her right to a jury trial, explaining a jury is 12 people from the community who, after hearing evidence, decide unanimously if she remains gravely disabled. The court also explained a court trial to Joanne, advising her in such instance a judge would hear the evidence and make the decision. The court further told Joanne, who, due to Covid, already had waited two months for her trial date, that if she wanted a jury trial she would have to wait another nine months. The court did not advise Joanne that she, through counsel, could participate in jury selection. So her trial could proceed that day, Joanne waived her right to a jury trial, after which trial the court granted the petition for reappointment that maintained the conservatorship. Joanne appealed, taking issue with the court's jury trial waiver advisement.

KEY ISSUE:

Whether the trial court's jury trial waiver advisement was sufficient so that Joanne's waiver was voluntary, knowing and intelligent.

RESULT:

The appellate court affirmed. A jury trial waiver must be voluntary, knowing, and intelligent. When examining whether a waiver was voluntary, knowing and intelligent, the appellate court looks at the totality of the circumstances and whether the jury trial waiver advised: (1) a jury is twelve people from the community; (2) the conservatee, through counsel, can participate in jury selection; (3) all jurors must agree; and (4) if jury trial is waived, the judge alone decides. Here, considering the totality of the circumstances the court's advisement was sufficient despite the failure to tell the conservatee she could participate in jury selection.

Conservatorship of C.O., (2021) Cite as H047087

Counsel's request for a bench trial, in the presence of the conservatee, is sufficient to satisfy the requirements of a voluntary, knowing and intelligent waiver of the right to jury trial.

BACKGROUND:

C.O. was under an LPS conservatorship. Public guardian, C.O.'s conservator, petitioned for reappointment, alleging C.O. remained gravely disabled. The trial court issued a written citation to C.O. notifying him of his right to a jury trial. At the initial reappointment hearing, C.O.'s attorney, with C.O. present, requested a bench trial. The trial court accepted counsel's request and so did not advise C.O. of his right to a jury trial or get a waiver of that right. At trial, the judge ruled C.O. remained gravely disabled and maintained the conservatorship. C.O. appealed.

KEY ISSUE:

Whether conservatee's counsel's request for a bench trial constitutes a voluntary, knowing and intelligent waiver of the right to jury trial where the court made no other advisement about the conservatee's right to same.

RESULT:

The appellate court affirmed. In applying the harmless error standard regarding the trial court's failure to explicitly advise C.O. of his right to a jury trial, the appellate court found there was no evidence C.O. desired a jury, was unaware of his right to a jury, or that his attorney, in asking for a bench trial, acted without C.O.'s approval or over his objection.

Hudson v. Foster (2021) 68 Cal.App.5th 640

A conservatee has no duty to investigate the representations made by a conservator in accounting for the conservatorship estate absent independent notice of a fact that would put a reasonable person on notice, and denying a petition to vacate an order approving an account based on extrinsic fraud where the moving party had not duty to investigate constitutes an abuse of discretion.

BACKGROUND:

Conservatee was injured in an automobile accident that resulted in a $10 million settlement, the net proceeds of which were funded into the conservatorship estate and managed by conservatee's friend as conservator. In conservator's first and final account he detailed 28 checks totaling more than $500,000 that purportedly represented payments made to conservatee's creditors. In fact, they were checks cashed by conservator. Shortly after the account was approved, one of the reportedly paid creditors contacted conservatee to secure payment of its outstanding debt, revealing for the first time that conservator had not paid the creditor as represented in the account. Conservator filed a motion to vacate the order approving the final account on the basis of extrinsic fraud, which motion the trial court denied on the basis that conservatee had had an opportunity to investigate conservator's statements in the petition to approve the account but had not done so. Conservatee appealed.

KEY ISSUE:

Whether the court abused its discretion in failing to vacate the order on the petition to approve the account where conservator misrepresented payments allegedly made to payees in the account that were not without the knowledge of the conservatee and without the conservatee having been put on notice of any fact that would have triggered an obligation to investigate.

RESULT:

The appellate court reversed and remanded with instruction to the trial court due to the fact that conservator, as a fiduciary, owed a duty to conservatee to be honest and forthwith in his accounting, and because of that duty conservatee had no duty to investigate the veracity of conservator's account barring some independent fact that would have put a reasonable person on notice so as to trigger an obligation to investigate.

CAPACITY

Eyford v. Nord (2021) 62 Cal. App. 5th 112

A trial court's determination that contestants failed to meet their burdens of proof to set aside a trust instrument based on lack of capacity was supported by substantial evidence.

BACKGROUND:

Kay died in December 2016 at 90 years old. Earlier that year, Kay executed a trust naming St. Jude Children's Research Hospital as the sole beneficiary of her estate, disinheriting her son and two granddaughters, the children of Kay's predeceased daughter. In 2015, Kay underwent a mini-mental state exam that showed she was experiencing mild-to-moderate cognitive impairment. Kay's granddaughter, around that time, discovered that Kay had a bank account worth $2.4 million, of which Kay said she had no prior knowledge. Shortly thereafter, one of the granddaughters took Kay to an estate planning lawyer for the purpose of preparing a trust naming the granddaughters as sole beneficiaries, but the document was not signed. Kay's medical records from the time show that she was confused and disoriented, unable to leave her retirement home unassisted, and unable to manage her own cash. Kay became paranoid that her granddaughters were trying to take away her independence. Subsequently, Kay found a new lawyer, to whom she mentioned that she wanted her estate to go to "sick babies" but did not mention a particular charity. The lawyer suggested St. Judge as a potential beneficiary. Kay loved the idea and executed the trust. After Kay died, the granddaughters filed a trust contest alleging incapacity. At trial, several witnesses testified that Kay was always dressed well, in a clean home, and never showed disorientation. Multiple doctors testified in accord. There was competing expert testimony. The court found that the granddaughters failed to meet their burden of proof to show that Kay was suffering from a delusion at the time she executed the trust. The granddaughters appealed.

KEY ISSUE:

Did the trial court err in rejecting the granddaughters' claim of incapacity under Probate Code section 6100.5(a)(2) by wrongly selecting a single false belief that Kay had about her granddaughters – i.e., they wanted her out of the way to get her money – and determining it was not a delusion?

RESULT:

Affirmed. Probate Code section 6100.5(a)(2) provides that an individual is not mentally competent to make a will if they are suffering from a mental health disorder with symptoms including delusions or hallucinations that result in an individual devising property in a way that, except for the existence of delusions or hallucinations, the individual would not have done. The burden is on the contestant to prove that the testator was of unsound mind. If even slight evidence supports a belief, it is not a delusion, and capricious and arbitrary likes, dislikes and mistrusts are not evidence of an unsound mind. The substantial evidence standard applied to the court's determination. There was substantial evidence that Kay did not have a mental health disorder. It was not reversible error that the court did not specifically address whether each allegedly false belief alleged was a delusion.

AMENDING TRUSTS

Haggerty v. Thornton (2021) 68 Cal.App.5th 1003

A trust may be amended or revoked either by the terms for amendment set forth in the trust instrument or by complying with probate code requirements to provide a signed writing to the holder of the amendment/revocation power, unless the trust provides that the former is the exclusive method for doing so.

BACKGROUND:

Decedent executed a trust, which she amended in 2016 in favor of appellant. Subsequent thereto, decedent executed two additional documents that disinherited appellant, neither of which complied with the specific provisions for amending and revoking set forth in the trust, but which otherwise complied with probate code requirements for amending and revoking. The trial court found that the decedent's failure to comply with the trust's non-exclusive method for amending/revoking the trust was not fatal in her efforts where she complied with probate code amendment/revocation requirements by amending the trust in a signed writing delivered to herself. The disinherited appellant appealed.

KEY ISSUE:

Whether decedent's failure to comply with the non-exclusive method for revoking or amending the trust, as set forth therein, invalidated the amendment where testator otherwise complied with probate code requirements for amending and revoking – i.e. by a signed righting delivered to the trustor.

RESULT:

Affirmed. Probate code section 15401(a) provides that a revocable trust may be revoked either (1) "[b]y compliance with any method of revocation provided in the trust instrument" or (2) "[b]y a writing, other than a will, signed by the settlor or any other person holding the power of revocation and delivered to that trustee during the lifetime of the settlor or the person holding the power of revocation." However, if the trust instrument "explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation," the method in the trust instrument must be used. Here, while the trust provide *a* method for revoking or amending, it did not specifically state that it was the exclusive method, and, therefore, compliance with section 15401(a)(2) means the amendment was valid.

ENFORCING ARBITRATION AWARDS

Law Finance Group, LLC v. Key (2021) 67 Cal.App.5th 307

An arbitration award may not be vacated if the objector fails to timely file their challenge.

BACKGROUND:

Key v. Tyler is back! Key, fresh off her victories against her sister, Tyler, in having secured an award for one-third of their mother's estate for sis' undue influence of mom and having successfully disinherited sis for her contest of mom's previous trust now has to pay the piper, the finance company who fronted the $2.4 million Key spent defeating her sister and invalidating her ill-gotten documents. However, while Key was happy to pay the finance company the principal it advanced, she refuses to pay interest, claiming it violates California's usury laws. The matter was arbitrated, where the finance company prevailed and awarded nearly $750,000 in interest plus nearly $850,000 in attorney's fees and costs. They then filed to confirm the arbitration award, to which Key filed a motion to vacate 130 days later, responding to the petition to confirm nine days after that. Despite her procedural deficiencies – a motion to vacate must be filed within 100 days – the court vacated the arbitration award. The finance company appealed.

KEY ISSUE:

Whether Key's motion to vacate the arbitration award was timely.

RESULT:

Reversed and remanded. A motion to vacate must be filed within 100 days from service of the award, and here Key filed her motion 30 days after that deadline expired, although review has been granted, which means that the saga that is Key v. Tyler will continue to live on.

TITLE PRESUMPTIONS

Estate of Wall (2021) 68 Cal.App.5th 168

Family Code sections 760 and 721 presumptions of community property and undue influence between spouses in community property transactions trump Evidence Code section 662 form of title presumption, unless rebutted by a preponderance of the evidence.

BACKGROUND:

Decedent husband and surviving spouse purchased a home financed solely by decedent with title taken in his name alone, with surviving spouse executing a quitclaim deed disclaiming any interest in the property. Surviving spouse made two small monetary contributions to the property, but otherwise mortgage payments and maintenance were paid from decedent's separate property assets. Following decedent's passing, surviving spouse filed a spousal property petition claiming the property as community. Decedent's children from his previous relationship objected, claiming that the presumption of title – Decedent took title as his sole and separate property – under Evidence Code 662 was dispositive. The trial court disagreed where the mortgage broker, real estate broker and the surviving spouse all testified that it was the couple's intent to own the property together, despite the titling, relying on Family Code sections 760 (presumption of community property) and 721 (presumption of undue influence among spouses). Decedent's children appealed.

KEY ISSUE:

Whether the form of title presumption found in Evidence Code section 662 or the community property and undue influence presumptions found in Family Code sections 760 and 721 control disposition of property acquired during marriage but titled solely in one spouse's name.

RESULT:

Relying on *In re the Marriage of Vallie*, 58 Cal.4th 1396, 171 Cal.Rprt.3d (2014), the appellate court affirmed the trial court order finding that Family Code sections 760 and 721 applied in the contest of determining community property rights, and that the children had not rebutted those presumptions even through tracing in the face of the independent testimony of the mortgage broker and real estate broker who affirmed it was the couple's intent to own the property together.

Pearce v. Briggs, 68 Cal.App.5th 466 (2021)

A joint tenancy may not be severed by a will if (1) the language of the will expresses no clear, unequivocal intent to sever the joint tenancy, and (2) is not recorded.

BACKGROUND:

Ruth and Charles Sr. married in 1949. When they married, Ruth already had two biological children, Everett and Flora. After they married, Ruth and Charles Sr., also known as "Jack", adopted three children, including Margaret, Teresa, and Charles, Jr. Ruth and Jack bought a property known as the Gibson property as join tenants. They then conveyed a 12.5 percent interest to Jack's sister, Marie, leaving 87.5 percent in joint tenancy. Jack then purchased a 50% interest in a property called the Rosedale property (and an entity he controlled purchased the other 50%). Ruth then executed a will, which included a provision that all property owned by Ruth and Jack, including that which was held as joint tenancy, was intended to be community property, and that her community property share would be distributed according to her will. Ruth died before Jack. After Ruth's death, against the advice of counsel, Jack refused to probate Ruth's Will. Jack then executed a will leaving his estate in five equal shares to the five children. Again, against the advice of counsel, Jack executed an affidavit of joint tenancy concerning the Gibson property. Jack then executed a living trust in favor only of Margaret, Teresa, and Charles Jr., and put the Gibson and Rosedale Properties into the trust. Jack then died.

Everett and Flora (the "Pearce Parties"), on the one hand, and Charles and Margaret (the "Briggs Parties"), on the other hand, filed competing 850 petitions. The Pearce Petition sought to confirm title in two properties (known as the Gibson Property and the Rosedale Property) in the estate of Ruth Briggs, in which the Pearce Parties had an interest. The Briggs Petition sought to quiet title in the name of Jack's trust for the benefit of only the Briggs Parties. Both petitions were tried in a bench trial and the trial court granted the Briggs Petition and denied the Pearce Petition.

KEY ISSUE:

Is a joint tenancy interest severable by a will where there is no clear and unequivocal severance and no recordation of the Will?

RESULT:

The Court of Appeal affirmed the trial court's ruling. Pearce argued that a Will has a dual character as both a will and "something else at the same time" and that the joint tenancy was immediately severed upon execution of the will, because a testator otherwise has no power to dispose of a joint tenancy property by a will. However, the Court of Appeal was unpersuaded. The operative language in Ruth's will was as follows: "I declare that for convenience or through inadvertence title to some property owned by myself and my husband may be held of record in the form of joint tenancy, but that all such property is in fact intended to be our community property." This language did not reflect a clear and unequivocal intent to sever the joint tenancy at the time of execution of the will. The language was non-specific, did not refer to the Gibson property particularly, and did not demonstrate an intention to unilaterally sever the joint tenancy. While wills can be effective immediately upon execution if they are contractual in nature (i.e. a joint will), they become effective immediately, a will otherwise is revocable until death and therefore is

not immediately effective. Further, even if the language were clear and unequivocal in the Will, Civil Code section 683.2 requires an instrument severing a joint tenancy must be either recorded prior to the death of the joint tenant or within seven days after death, if notarized. Moreover, there was no agreement between Ruth and Jack to transmute the joint tenancy to community property.

Notably, as to the Rosedale Property, while Ruth had a community property interest in the entity that owned 50% thereof, she did not have an interest in the asset itself. While Ruth had a right to her share of profits, the interest itself was personal property and the entity did not dissolve until after her death and Ruth accordingly did not acquire a community property interest in the property itself. If Jack converted Ruth's personal property interest in the entity that owned 50% of the Rosedale Property, the claims were time barred.

PROPERTY TAX REASSESSMENT

Bohnett v. County of Santa Barbara, 59 Cal.App.5th 1128 (2021)

In determining whether a change in ownership that requires reassessment of realproperty 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, theestate 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 totheir 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 childrenreceived 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, aspurchasers. As a sibling-to-sibling transfer, the property was properly reassessed.

DEFINING TRUST ASSETS - STOCK

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

The term "stock" includes all classes of stock for purposes of determining whethera 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, thecorporation transferred the real property entirely to the Trust. The county assessor concluded the transfer constituted a change of ownership from the corporation to a trustand 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 stockor 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 therelevant 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 ofthe corporation changed as a result of the transfer, supporting the argument for reassessment.

NOTE: The California Supreme Court granted review on March 17, 2021, and the matter is fully briefed with Amicus Curiae Briefs filed by the California State Association of Counties and the California Assessors' Association.

BINDING NON-PARTICIPANTS TO A MEDIATED SETTLEMENT

Breslin v. Breslin, 62 Cal.App.5th 801 (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 giftsand 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 "EstateCharities (6/30/2017)" in Kirchner's estate planning binder, and based on this documentBreslin 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 threeof 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 wasapproved 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 partiesmay not refuse to participate and later complain about the result.

Dissent. Distinguished from *Smith v. Szeyller* (2019) 31 Cal.App.5th 450 on thegrounds 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 hadnot required – e.g. participation in mediation.

Dunlap v. Mayer (D077561) (Cal. Ct. App. Apr. 23, 2021)

The estate of deceased beneficiary stands in the shoes of the beneficiary and, as such, has standing to compel a trust accounting, and where the probate court dismissed the petition to compel an accounting without notice and without taking evidence or argument it was an abuse of the court's discretion.

BACKGROUND:

Erwin and Josephine Mayer were married and had two children, Maria and Claudia. Erwin died in 1995. Prior to their deaths, Erwin created a testamentary trustfor Josephine, which became the subject of litigation that resulted in a settlement agreement by and among family members and certain business entities. The Court approved that settlement. Under the settlement, Josephine was sole income beneficiary during her lifetime of the Marital Trust and Claudia disclaimed any interestin the Trust. Josephine was the executor of Erwin's will and Maria was the named trustee of the Marital Trust.

The Marital Trust was to be funded with Erwin's 99 percent interest in a limited partnership and stock in another corporation, of which Maria's husband was president, and of which the limited partnership was affiliated.

Josephine died in 2016. John Dunlap was executor of Josephine's New York probate estate. The Estate (Dunlap) petitioned for an accounting for the period from Erwin's death in 1995, through 2016. Maria objected to the petition, alleging (1) she did not know if the Marital Trust was ever funded; (2) she never acted as trustee; (3) she never possessed the assets as trustee of the Marital Trust; and (4) the entities that were to fund the Marital Trust had been defunct for more than 15 years. As such, no accounting could be provided.

The court held case management conferences in October 2019 and January 2020.Discovery was incomplete as of January 2020. The Estate filed a progress report attaching documents showing that, among other things, in 1996, that Maria had signed a partnership agreement as trustee of the Marital Trust. Nevertheless, the Court dismissed the petition without prejudice because as (1) not reasonably necessary for theprotection of the interests of the trustee or beneficiary and (2) subject to the court's discretion to take any other action necessary or proper to dispose of the matters presented by the Petition.

KEY ISSUE:

Did the Estate of a deceased beneficiary have standing to seek to compel an accounting and did the Court abuse its discretion in dismissing the petitions at a status conference without an evidentiary hearing?

RESULT:

The Court of Appeal reversed and remanded, holding (1) that the Estate had standing to pursue the accounting and (2) that the dismissal was an abuse of discretion.

As to standing, Maria argued that the Estate had no standing to petition under section 17200, because the Estate was not a present beneficiary of the Trust, and only trustees and beneficiaries may file petitions under Probate Code section 17200 with respect to a trust other than a charitable trust. Citing

Barefoot v. Jennings (2020) 8 Cal.5th 822 for an expansive reading of Section 17200, the Court of Appeal disagreed and found that the Estate had standing to pursue the accounting. The Estate's claim as a beneficiary survived death under Code of Civil Procedure sections 377.20(a) (survivability) and 377.30 (a personal representative or successor-in-interest may commence an action that decedent could have brought).

As to the dismissal, the Court of Appeal held that the probate court erred in dismissing the petition without an evidentiary hearing or completing of discovery and without giving the Estate notice. Probate Code section 1046 provides that the court "shall hear and determine any matter at issue and response or objection presented, consider evidence presented, and make appropriate orders." None of that happened. Neither Probate Code section 17202 nor 17206 allows for the dispensing of a petition without notice.

MEDI-CAL REIMBURSEMENT

Riverside County Public Guardian v. Snukst, (2022) Cite as E074949

The California Department of Health Care Services may recover reimbursement from a decedent's revocable trust for Medi-Cal benefits paid if the decedent died prior to January 1, 2017.

BACKGROUND:

Decedent created a revocable trust and named his niece as sole beneficiary. Prior to his death, Decedent received Medi-Cal benefits totaling approximately $480,000, which the California Department of Health Care Services sought to recover after Decedent passed in 2016. The Department had filed a creditor's claim, which the public guardian sought approval to pay from Decedent's trust. The probate court denied approval, ordering the trust assets paid to the Decedent's niece. The Department appealed.

KEY ISSUE:

Whether prior law allowing recovery of Medi-Cal benefits paid applied to a decedent's revocable trust where decedent died in 2016 but his estate was being administered subsequently.

RESULT:

The appellate court reversed. In 2016, California law was amended to exclude from Medi-Cal recovery for reimbursement from trusts of persons who died on or after January 1, 2017. Here, the decedent died in 2016, meaning the prior law applied and his revocable trust assets were subject to the Department's reimbursement claim.

ANTI-SLAPP

Dae v. Traver (2021) 69 Cal.App.5th 447

A motion to strike a petition to enforce the no-contest clause under the anti-SLAPP statute is properly denied where the petitioner demonstrates a probability of prevailing on the no-contest petition.

BACKGROUND:

Dae filed a petition to challenge Robert's conduct in setting up a financial structure that Robert claimed was designed to avoid estate taxes and to remove Dae as a beneficiary of the trust. Robert claimed that Dae's petition would implicate the no contest provision of a trust that became irrevocable prior to 2001, which deemed a filing that sought to "impair" provisions in the trust giving the trustee authority to manage assets as a contest. Robert also claimed that the trustor intended to allow the trustee to change beneficiaries and that the petition violated the no-contest clause for that reason as well. Robert accordingly filed a petition to enforce the no-contest clause. Dae filed an anti-SLAPP motion arguing that his petition was protected activity and that Robert's petition did not have minimal merit. The trial court denied the motion and Dae appealed.

KEY ISSUE:

Under the former no-contest clause statute applicable to trusts that became irrevocable prior to 2001, is there a probability that a petition to challenge actions by a trustee taken within the scope of that trustee's authority be deemed a contest if a beneficiary sought to "impair any of the provisions of" the trust, such that minimal merit exists to defeat an anti-SLAPP motion?

RESULT:

The Court of Appeal affirmed. Analysis of an anti-SLAPP motion has two prongs: (1) does the pleading in question seek redress for the moving party engaging in protected activity and (2) if so, is the challenged claim based on protected activity legally sufficient and factually substantiated. The moving party has the burden on the first prong; if that prong is met, the responding party has the burden as to the second. It was undisputed that petitioning the court to redress Robert's actions as trustee (effectively disinheriting Dae through the creation of a split dollar investment trust that Robert claimed he was authorized to make) was protected activity. However, Robert demonstrated "minimal merit" to show that Dae had filed a contest, because Dae specifically challenged his removal as a beneficiary of the trusts that the settlor had established for life insurance proceeds, and also challenged related decisions by the trustee. Because Dae sought to limit the discretion of a trustee by challenging the use of trust assets to purchase life insurance and to fund other trusts with the proceeds for the purpose of avoiding estate taxes (which was explicitly within the scope of the trustee's authority under the trust), and other evidence was provided by Robert to support a reasonable inference that the settlors intended that the property of the trust would pass to certain beneficiaries excluding Dae, there was at least a probability that Dae's petition constituted a contest and the motion was properly denied. The Court of Appeal was careful to note that it was not deciding whether the no-contest petition itself should be granted, but merely that it should not be stricken for lack of minimal merit.

Justice Ashman-Gerst dissented, concluding that the trust was unambiguous that Dae had an irrevocable remainder interest in the trust. Further, the dissent argued that the trust instrument did not authorize the trustees to alter, revoke, or modify the gift to Dae and therefore Dae seeking redress for the trustees effectively disinheriting Dae did not constitute a contest.

FINANCIAL ELDER ABUSE

Ring v. Harmon, (2021) Cite as E075232

Standing to asset a financial elder abuse case exists for an individual where the abuse was committed against the person in their fiduciary capacity but the alleged injury harmed their beneficial interest in the estate and an action against themselves as fiduciary would be futile.

BACKGROUND:

Eighty-year-old mom was a beneficiary under decedent's will and appointed executrix of decedent's estate. As executrix, mom encumbered decedent's house, but later sued individually claiming the loan and its resulting encumbrance were the product of predatory lending and financial elder abuse, among other things. Defendants' demurred to mom's complaint because she had sued in her individual capacity, not her fiduciary capacity. The trial court sustained the demurrer. Mom appealed.

KEY ISSUE:

Whether an elder who is both beneficiary and executrix of an estate has standing to assert a claim for financial elder abuse in her individual capacity where the alleged injury impairs her individual interest in the estate.

RESULT:

The appellate court reversed. Mom had no authority to assert a claim for financial elder abuse on behalf of the estate, and because she was the beneficiary and executrix a claim against herself in her fiduciary capacity was not available. Therefore, mom's special circumstance justified her bringing an action for elder abuse in her individual capacity despite the fact the alleged bad acts involved her actions as fiduciary. Separately, her financial elder abuse claim did not require her to hold title to the damaged property directly because her beneficial interest was harmed by the debt wrongfully put on the property.

MEDI-CAL REIMBURSEMENT

Riverside County Public Guardian v. Snukst (2022) Cite as E074949

The California Department of Health Care Services may recover reimbursement from a decedent's revocable trust for Medi-Cal benefits paid.

BACKGROUND:

Decedent created a revocable trust and named his niece as sole beneficiary. Prior to his death, Decedent received Medi-Cal benefits totaling approximately $480,000, which the California Department of Health Care Services sought to recover after Decedent passed in 2016. The Department had filed a creditor's claim, which the public guardian sought approval to pay from Decedent's trust. The probate court denied approval, ordering the trust assets paid to the Decedent's niece. The Department appealed.

KEY ISSUE:

Whether a decedent's revocable trust assets are responsible for reimbursing monies paid for Medi-Cal benefits on behalf of the deceased grantor.

RESULT:

The appellate court reversed. Public policy requires a broad definition of the term "estate" when considering the issue of reimbursement for Medi-Cal benefits paid and include all assets in which the recipient of those benefits may have had an interest in, including, specific to this case, assets placed in a revocable trust.

SPECIAL IMMIGRANT JUVENILE STATUS

S.H.R. v. Rivas (September 2, 2021) Cite as B308440

A minor seeking judicial findings that would enable Special Immigrant Juvenile Status under Federal Immigration law must demonstrate abuse, neglect, or abandonment by a preponderance of the evidence.

BACKGROUND:

S.H.R. arrived from El Salvador in the summer of 2018 and moved in with his cousin's husband in Palmdale. S.H.R. filed to appoint his cousin's husband (Rivas) as his guardian and subsequently filed for special immigrant juvenile status. From the time S.H.R. was ten years old until he was fifteen, S.H.R. worked in the fields for up to seven hours a day and would support his family. After S.H.R. refused to join a gang in ninth grade, his parents made him stop going to school for fear he would be killed there and forced him instead to work at a car wash and he eventually saved sufficient money to get to the United States. S.H.R. alleged that his parents neglected him by failing to provide for his health and welfare, forcing him into child labor at ten years old. The court denied the petition for special immigrant juvenile status findings, ruling that this was not "neglect" under California law and that reunification with one or both parents was viable. S.H.R. appealed.

KEY ISSUE:

What is the standard of review of denials of petitions for special immigrant juvenile findings?

RESULT:

Affirmed. The order denying the SIJS application was final and appealable. S.H.R. had the burden of proof at trial. The standard of review was whether the evidence was "uncontradicted and unimpeached" and "of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding." S.H.R. argued that the role of the superior court was to determine whether there is evidence that could support a ruling in favor of the petition. The Court of appeal disagreed, because Section 155 of the Code of Civil Procedure requires factual findings and federal law requires that evidence show that the juvenile was actually subjected to parental maltreatment. The Court of Appeal further found that spending six to seven hours working every day as a child may violate child labor laws was not per se neglect when S.H.R. was heling to earn money for an impoverished family. Similarly, the decision to pull a child from school to avoid death threats from gang members was not neglect. Further, the fact that his parents were unemployed is not neglect without more. S.H.R. also failed to show that reunification was not viable based on the foregoing.

NOTE: The Supreme Court granted review on December 29, 2021.

LPS CONSERVATORSHIPS – WAIVER OF JURY TRIAL

Conservatorship of the Person of Joanne R., (2021) Cite as B310906

An LPS jury waiver must be voluntary, knowing and intelligent.

BACKGROUND:

Due to her mental illness the court found Joanne gravely disabled and placed her under an LPS conservatorship. When her conservatorship was set for renewal, Joanne objected. On the first day of trial on the renewal the court advised Joanne of her right to a jury trial, explaining a jury is 12 people from the community who, after hearing evidence, decide unanimously if she remains gravely disabled. The court also explained a court trial to Joanne, advising her in such instance a judge would hear the evidence and make the decision. The court further told Joanne, who, due to Covid, already had waited two months for her trial date, that if she wanted a jury trial she would have to wait another nine months. The court did not advise Joanne that she, through counsel, could participate in jury selection. So her trial could proceed that day, Joanne waived her right to a jury trial, after which trial the court granted the petition for reappointment that maintained the conservatorship. Joanne appealed, taking issue with the court's jury trial waiver advisement.

KEY ISSUE:

Whether the trial court's jury trial waiver advisement was sufficient so that Joanne's waiver was voluntary, knowing and intelligent.

RESULT:

The appellate court affirmed. A jury trial waiver must be voluntary, knowing, and intelligent. When examining whether a waiver was voluntary, knowing and intelligent, the appellate court looks at the totality of the circumstances and whether the jury trial waiver advised: (1) a jury is twelve people from the community; (2) the conservatee, through counsel, can participate in jury selection; (3) all jurors must agree; and (4) if jury trial is waived, the judge alone decides. Here, considering the totality of the circumstances the court's advisement was sufficient despite the failure to tell the conservatee she could participate in jury selection.

Conservatorship of C.O., (2021) Cite as H047087

Counsel's request for a bench trial, in the presence of the conservatee, is sufficient to satisfy the requirements of a voluntary, knowing and intelligent waiver of the right to jury trial.

BACKGROUND:

C.O. was under an LPS conservatorship. Public guardian, C.O.'s conservator, petitioned for reappointment, alleging C.O. remained gravely disabled. The trial court issued a written citation to C.O. notifying him of his right to a jury trial. At the initial reappointment hearing, C.O.'s attorney, with C.O. present, requested a bench trial. The trial court accepted counsel's request and so did not advise C.O. of his right to a jury trial or get a waiver of that right. At trial, the judge ruled C.O. remained gravely disabled and maintained the conservatorship. C.O. appealed.

KEY ISSUE:

Whether conservatee's counsel's request for a bench trial constitutes a voluntary, knowing and intelligent waiver of the right to jury trial where the court made no other advisement about the conservatee's right to same.

RESULT:

The appellate court affirmed. In applying the harmless error standard regarding the trial court's failure to explicitly advise C.O. of his right to a jury trial, the appellate court found there was no evidence C.O. desired a jury, was unaware of his right to a jury, or that his attorney, in asking for a bench trial, acted without C.O.'s approval or over his objection.