Ventura County Bar Association

Trust, Estate & Conservatorship

Annual Litigation Update

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PROBATE LITIGATION

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ENFORCING SETTLEMENT AGREEMENTS

Welch v. Welch (May 31, 2022) 79 Cal.App.5th 283

A surviving spouse may waive appointment and inheritance rights under Probate Code sections 140-147 by a complete property settlement.

BACKGROUND:

H and W separated, initiated divorce proceedings, participated in mediation and entered into a written settlement agreement, which the parties were to formulate into a stipulated final judgment. W deceased before the stipulated final judgment was entered by the family court, divesting it of jurisdiction. Brendon Welch was appointed special administrator of W's estate, and in that capacity he filed a Probate Code section 850 petition seeking recovery of W's share of the marital estate, double damages and a determination of heirship. He also filed a petition for general administration. H, as surviving spouse, filed a competing petition for administration, as well as objections to Brendon's petition for administration and 850 petition. The probate court granted H's petition for administration, sustaining his objections to Brendon's petition for administration and dismissing Brendon's 850 petition, finding that the parties' settlement agreement was not a complete property settlement under Probate Code section 145. Brendon appealed.

KEY ISSUE:

Whether a settlement agreement constitutes a "complete" property settlement is determined by the totality of the circumstances, including extrinsic evidence of the parties' intent.

RESULT:

Reversed and remanded. Probate code section 145 sets forth two separate mechanisms for waiting surviving spouse rights: (1) by making an express waiver; or (2) by a complete property settlement. While an express waiver requires specific language, a complete property settlement does not, and H's arguments to the contrary - e.g. that the settlement agreement failed to contain the word "complete" - fail. Further, looking to the parties' actions in the family court proceedings, namely H's failure to object to the terms of the settlement agreement and his actions seeking to enforce it prior to W's passing, demonstrate the parties' intention that the settlement agreement constitute a complete property settlement.

Estate of Jones (September 2, 2022) 82 Cal.App.5th 948

An unrealized but ascertainable condition precedent will not preclude the enforcement of a settlement agreement.

BACKGROUND:

Daughter was successor trustee of dad's trust, from which dad's third wife was omitted. "Unsurprisingly,…litigation ensued." Daughter and W settled the omitted spouse claim, with daughter agreeing to pay W $3 million "out of the escrow from the sale" of a specific property that was under contract at the time for $13 million. Subsequently, the property fell out of escrow, failing to satisfy the implied condition precedent of a sale. W sought to enforce the settlement agreement, which the trial court denied finding the condition precedent meant there was no agreement at all. W appealed.

KEY ISSUE:

Whether a court may enforce a settlement agreement with an implied condition precedent.

RESULT:

Reversed and remanded. While a court may interpret ambiguous settlement terms, it may not insert conditions or terms the parties did not agree to, and here the parties' agreement unambiguously contained a condition precedent to payment - i.e. that the specific property would be sold - and, therefore, the agreement was enforceable as written. W would just need to wait until the property was sold to get paid.

Chui v. Chui, (March 2, 2022) 75 Cal.App.5th 873

The burden of proving substantive and procedural unconscionability is on the moving party, and barring an adequate showing will not serve to disturb the trial court's ruling. Also, while Probate Code Section 259 serves to limit what an abuser can receive from a trust, will, or by the laws of intestacy, it does not serve to expand the rights of others or create a rule for interpreting provisions of a trust document.

BACKGROUND:

The extended Chui family was involved in protracted trust litigation involving petitions under Probate Code Section 850 and claims for financial elder abuse, including under Probate Code Section 259. After years of litigation the parties' disputes over the patriarch and matriarch's substantial real estate and other personal asset was resolved via settlement confirmed orally on the record before the probate court, including oral confirmation by Ms. Christine Chui, a central focus of the litigation whom had been accused of stealing trust assets and financial elder abuse against the trustor. Because the settlement affected the interests of Ms. Chui's two minor children it was subject to approval by their court-appointed guardian ad litem (GAL). Eventually the GAL entered into a written settlement agreement that incorporated but modified the terms of the settlement in a way that benefit his clients but did not materially change the obligations of Ms. Chui under the agreement. Still, within months of the original settlement

agreement being memorialized on the record, Ms. Chui sought to invalidate the settlement agreement under innumerable theories, including that she was sick, on codeine and unable to appreciate what she was consenting to when she agreed to the terms of the settlement. Unsuccessful in her efforts, when the GAL sought approval of the settlement to which he had agreed, Ms. Chui objected, which objections, after an evidentiary hearing, were sustained for the agreement was not in the minors' best interests. The GAL then sought and secured improved settlement terms from the other parties and sought approval of that agreement, which the court approved. Ms. Chui and her children appealed, claiming under numerous theories that the approval of the settlement should be overturned because, in sum and substance, it was unfair to the minor children.

KEY ISSUE:

Whether the trial court's approval of the GAL's second settlement agreement was procedurally or substantively unconscionable. Also, whether Probate Code Section 259 serves to disinherit someone found to have committed financial elder abuse.

RESULT:

The appellate court affirmed the trial court's approval of the settlement agreement. First, the court's approval of the settlement agreement was not procedurally unconscionable because Ms. Chui was present in court with three separate lawyers when she agreed to the settlement agreement on the record. She also had personally affirmed she had hear, understood and wished to be bound by the settlement terms. Similarly, the court's refusal to hold an evidentiary hearing was of no moment where Ms. Chui had failed to ask for an evidentiary hearing or make a showing of proof as to what evidence she wished to present. Second, the court's approval of the settlement agreement was not substantively unconscionable where the agreement did not produce a result more unfavorable than trial could have produced, taking into account the possibility that Ms. Chui could have been found liable for having committed financial abuse and for double damages under Probate Code Section 859. The court came to this determination in part by correcting Ms. Chui's mistaken hypothesis whereby she argued that if found liable for financial elder abuse her children would then take her share of the estate under Probate Code Section 259. The court explained that while Section 259 limits what an abuser may receive from a will, trust or via intestacy, it does not expand the rights of others or create a rule for interpreting provisions of a trust document.

GUARDIANS AD LITEM

Chui v. Chui (November 30, 2022) Cite as B308574

A minor capable of making informed decisions can retain an attorney of his or her choosing for purposes of bringing a petition to disqualify his or her court appointed guardian ad litem.

BACKGROUND:

The court appointed a guardian ad litem for two minor beneficiaries of a trust in 2018 when they were 8 and 10 years old. In 2020, the minor beneficiaries, each represented by their own counsel, filed petitions to remove the guardian ad litem, to which the guardian ad litem filed demurrers and anti-SLAPP motions. Separately, the guardian ad litem filed motions seeking to disqualify the minors' attorneys, arguing, *inter alia,* the attorneys could not represent unemancipated minors. The court granted the disqualification motions, reasoning that Code of Civil Procedure section 372 requires minors to appear through a guardian ad litem. The court struck the removal petitions without ruling on their merits, as wells as the guardian ad litem's demurrers and anti-SLAPP motions as moot. Minors appealed.

Guardian ad litem filed a motion to dismiss the appeal on the grounds that he was the only with authority to represent the minors and he did not authorize the filing of the appeal. The Court of appeal rejected the motion.

KEY ISSUE:

Whether minors can retain counsel for purposes of removing their court appointed guardian.

RESULT:

The appeal from the orders granting the guardian ad litem's disqualification motion are moot. During the course of the appeal, the minors reached an age of majority and have been able to be represented by counsel of their choice.

The orders striking the minors' removal petitions are vacated and the trial court is directed to enter new orders terminating the guardian ad litem's appointment. The court reasoned "a minor capable of making informed decisions has the right to petition for the removal of a guardian ad litem and to appear in the court with the aid of retained counsel for that purpose." The court noted that, while ordinarily it would remand to the trial court to exercise its discretion in determining whether to grant the removal petitions, there is no discretion to exercise because the appellants are no longer minors, thus, the law requires termination of the guardian ad litem's appointment where the sole basis for his appointment was the age of the clients.

CHOICE OF LAW

Wehsener v. Jernigan (December 28, 2022) Cite as D079623

Where a decedent dies domiciled in California, the question of parentage for purposes of intestate succession is determined under California law.

BACKGROUND:

Decedent died intestate domiciled in San Diego County. Decedent was survived by one first cousin (Shannon). Shannon opened a probate and was appointed administrator of the Decedent's estate. In her First and Final Report of Personal Representative [and] Petition for Distribution, Shannon alleged she was the Decedent's sole heir and distribution of his assets should be made to her.

Judy objected, claiming she was entitled to one-half of the Decedent's estate as issue of Decedent's maternal grandparents. Decedent's adopted uncle took in Judy when she was two years old and openly held her out as his child in Indiana. Judy was not the biological child of the Decedent's uncle, and she was never adopted. Neither Judy nor Decedent's uncle ever lived in California.

Meanwhile, Shannon claimed she found the Decedent's holographic will and filed a second petition for probate. One of the purported beneficiaries of that holographic will likewise filed a petition for probate. The probate court bifurcated the issue of Judy's heirship claim from the remaining issues. It ultimately held that Judy was the presumed natural child of Decedent's uncle under the Uniform Parentage Act, that Shannon had failed to proffer any facts to rebut that presumption, and that Judy was an intestate heir.

KEY ISSUE:

(1) Which law applies to the determination of parentage for purposes of intestate succession?
(2) Whether the presumption of parentage can be rebutted purely on the basis of public policy.

RESULT:

Affirmed. "California law applies to determine parentage when a person claims to be an heir of an intestate decedent who was domiciled in California when he or she died, even if, as in the instant case, the parent and child relationship was effectuated outside California." Further, public policy cannot rebut the presumption of parentage under the Uniform Parentage Act. Family Code section 7612 subd. (d) provides that the presumption created under section 7611 "affect[s] the burden of proof and may be rebutted *in an appropriate action* only by clear and convincing evidence". (Emphasis added). The italicized language does not mean the court has discretion to rebut the presumption by public policy alone, and in fact, California's public policy would support finding a parent-child relationship here.

ANTI-SLAPP MOTIONS

Starr v. Ashbrook (January 26, 2023) Cite as G060597

A beneficiary of a revocable trust has standing to seek surcharge of the trustee where he alleges the settlor is incompetent.

BACKGROUND:

Beneficiary of revocable trust with allegedly incompetent settlor filed a petition for suspension, removal, surcharge, and to enjoin the trustee from further breach of trust. Beneficiary alleged that, among other things, the trustee had wasted and misused trust assets by pursuing a meritless petition for instruction and using trust assets to fund litigation against beneficiary and his brothers. The trustee resigned and withdrew the petition for instructions, thus mooting the claims for suspension, removal, and enjoinment. Trustee filed an anti-SLAPP motion as to the surcharge claim, which the trial court denied. The trial court reasoned that the surcharge cause of action arose out of the trustee's alleged waste and misuse of trust assets, which are not protected activities.

KEY ISSUE:

Whether a beneficiary's surcharge cause of action arose out of allegations of waste and misuse of trust assets (unprotected activities for purposes of the anti-SLAPP statute), or from allegations of pursuing and funding litigation (which are constitutionally protected activities for purposes of the anti-SLAPP statute).

Whether beneficiary of revocable trust had standing to seek surcharge.

RESULT:

Affirmed. The anti-SLAPP motion was properly denied because the surcharge cause of action arose out of the trustee's alleged waste and misuse of trust assets, which are not constitutionally protected activities for purposes of the anti-SLAPP statute. Further, the beneficiary had standing even though trust was revocable under Probate Code section 15800 because he alleged the settlor was incompetent.

White v. Davis (January 5, 2023) Cite as E077320

A conservatee is only entitled to counsel of their choice in the proceedings specifically enumerated in Probate Code section 1471.

BACKGROUND:

Laura White (White), as the co-trustee of her father's (Tedesco) trust, filed applications for elder abuse restraining orders (EAROs) and temporary elder abuse restraining orders against Tom's wife, individuals purporting to represent Tom, a purported friend, and Tom's wife's daughter (Wear). Tedesco has been under a conservatorship since June of 2015. The court denied the application for temporary EAROs pending a hearing on the merits. In response, defendants (except for Wear) each filed anti-SLAPP motions, arguing that their efforts to remove the trustees of Tom's Trust and to contest a trust amendment was the conduct giving rise to the request for an EARO, which are protected activities. White opposed each motion and argued that the court should hear the anti-SLAPP motions together with her applications for EARO. The trial court declined White's request, and denied each anti-SLAPP motion.

KEY ISSUE:

Whether a conservatee is entitled to counsel of his choice under Probate Code section 1471 in a proceeding for an EARO.

Whether a trial court abuses its discretion by refusing to hear an EARO before, or at the same time as, an anti-SLAPP motion.

RESULT:

Affirmed as to the orders denying the anti-SLAPP motions. Remanded so the trial court could proceed to trial on White's applications for EAROs, finding the trial court abused its discretion to utilize its case management tools and prevent a delay in hearing the merits of the EAROs and grant temporary relief pending the resolution of the anti-SLAPP motions or deciding the anti-SLAPP motions and EAROs at the same time. The Court of Appeal also held that Tedesco was not entitled to counsel of his choice under the newly enacted Probate Code section 1471, because an application for an EARO is not one of the five enumerated types of proceedings under that section.

ELDER ABUSE RESTRAINING ORDERS

White v. Wear (March 8, 2022) 76 Cal.App.5th 24

The probate court can clarify allegations in a petition for an elder abuse restraining order but cannot expand the relief requested, and allegations of financial abuse in procurement of an illegitimate trust amendment are sufficient to justify a restraining order.

BACKGROUND:

"This case is yet another skirmish in a long series of disagreements about the control of the multi-million-dollar estate of nonagenarian Thomas S. Tedesco." White, one of Tedesco's daughters, a co-trustee of his trust, and proponent of the conservatorship established for him in 2015, petitioned for an elder abuse restraining order (EARO) against Tedesco's step-daughter, Wear, and her henchmen, based on their ongoing efforts to unduly influence the conserved Tedesco to modify his estate plan in their favor. Wear was served personally with the petition but failed to respond or appear. In granting the petition, the court modified the allegations in the petition to include mental suffering, harassment, and intimidation and also added relief not requested in the petition by prohibiting Wear from possessing firearms. After the uncontested hearing, Wear filed a peremptory challenge under Code of Civil Procedure section 170.6 along with her unrelated Anti-SLAPP motion, which challenge the court granted. Wear appealed the court's grant of the EARO, claiming the order was void for the court's expansion of the allegations and relief sought in the petition in its order and because of purported inherent bias.

KEY ISSUE:

May a trial court amend allegations to suit evidence of financial elder abuse set forth in a petition for an EARO, as well as issue orders not requested in the petition for same.

RESULT:

The court of appeal affirmed, mostly, but reversed to instruct the trial court to strike the additional orders restricting Wear from possessing firearms and ammunition. While White's efforts to procure the illegitimate trust amendment from the conserved Tedesco supported the issuance of the EARO, the firearms restriction was unavailable because White's petition alleged only financial abuse *un*accompanied by force, threat, harassment, intimidation, or any other form of abuse. Also, Wear's untimely peremptory challenge did not void the EARO.

INTESTATE SUCCESSION

Estate of Franco (January 30, 2023) Cite as A168540

A trial court must make each factual finding in Family Code section 7540 in order for the marital presumption to apply.

BACKGROUND:

The Decedent died intestate. He was survived by his biological son (Bertuccio), his sister and a niece (Morenos), as well as two half-brothers. Bertuccio was raised by Marilyn and Frank, Sr., who were married at the time of Bertuccio's birth. They later divorced. Frank Sr. is listed on Bertuccio's birth certificate, accepted Bertuccio into his home and openly held him out as his own child, and was directed to pay child support to Bertuccio in the divorce proceedings. It was not until Bertuccio was an adult that he learned that Decedent was his biological father.

Bertuccio filed a petition to administer Decedent's estate, and letters of administration were issued to him. The Morenos sought to remove Bertuccio. Bertuccio thereafter died and his half-sister was substituted into the probate proceeding. The Morenos filed a joint motion for summary judgment on their removal petitions, arguing that Bertuccio was not an heir entitled to inherit from the Decedent's estate under the laws of intestate succession. They argued that, under the "marital presumption" contained in Family Code section 7540—"the child of spouses who cohabitated at the time of conception and birth is conclusively presumed to be a child of the marriage"—Bertuccio could not establish that the Decedent was his parent for purposes of intestate succession. The court granted the motion for summary judgment, holding that because Bertuccio was a child of the marriage of Marilyn and Frank Sr., under the Family Code section 7540's marital presumption, Bertuccio was barred from proving the Decedent was his natural parent from whom he could inherit under intestate succession.

KEY ISSUE:

Whether the trial court properly granted summary judgment on the grounds that the marital presumption foreclosed a party's claim to inherit via intestate succession where the trial court did not make any finding regarding whether the married couple were cohabitating at the time of conception and birth of the child.

RESULT:

Reversed. Although a child of a marriage under the Family Code section 7540 marital presumption is barred from establishing that a parent-child relationship existed with a deceased third-person for purposes of inheritance under the laws of intestate succession, the trial court erred by applying the marital presumption without finding that Frank Sr. and Marilyn were cohabitating at the time of Bertuccio's conception and birth.

PROBATE CODE 850 LIMITATIONS

Parker v. Schwarcz (October 19, 2022) Cite as A165163

While Probate Code section 850 authorizes the return of real and personal property, it may not be used to obtain documents and communications in litigation.

BACKGROUND:

After termination of the temporary conservatorship Parker, the subject of the conservatorship, filed a Probate Code section 850 petition seeking communications and documents pertinent to the conservatorship from her former conservator, Schwarcz. The probate court denied the petition, finding that discovery, not Probate Code section 850, is the correct procedural mechanism for seeking what Parker sought. Parker appealed.

KEY ISSUE:

Whether Probate Code section 850 may be used to secure documents and communications held by another party.

RESULT:

Affirmed. A matter of first impression, the appellate court relied on the legislative history of Probate Code section 850 and its limitation to the recovery of estate "assets," as well as case authority speaking solely to real and personal property. The court also found that here the documents and communications sought had not been "owned" previously by Parker.

ATTORNEY FEES & COSTS

Bruno v. Hopkins (June 13, 2022) 79 Cal.App.5th 801

A beneficiary who pursues trustee removal in bad faith by be liable for attorney fees and costs in excess of their beneficiary interest.

BACKGROUND:

Mom and dad created a trust for the benefit of their family, naming their four daughters as unequal remainder beneficiaries. Bruno and another daughter each were to receive $200,000, while their younger sisters were to receive the remainder of the estate, valued at between $4-5 million. After dad passed and mom sent the notice of irrevocability under Probate Code section 16061.7, but before receiving a copy of the trust documents, Bruno filed a petition to compel production of the trust. After receiving a copy of the trust, Bruno had the document examined by an expert who questioned perceived differences in the document and asked to see the original. Before the review of the original was conducted, Bruno amended her petition to seek removal of her mom as trustee for breach of trust and to invalidate the trust as a forgery by her mom and two younger sisters. The court granted mom's motion to bifurcate Bruno's forgery action and received the support of her two younger daughters and the third daughter who testified that she did not feel her mom or sisters forged the trust. At trial, Bruno presented expert testimony supporting her conspiracy theory, which the court rejected in denying her petition. As the prevailing parties, mom and sisters sought and were awarded $829,000 in attorney fees and $96,000 in costs. Bruno appealed.

KEY ISSUE:

Whether a subjective good faith belief request for trustee removal and trust invalidation will preclude a finding of bad faith, and whether fees and costs awarded for bad faith may exceed a party's beneficial interest.

RESULT:

Affirmed. Probate courts have statutory authority under Probate Code section 15642 to make a party personally liable for bad faith fees and costs in an amount that exceeds their beneficial interest, and this authority is limited only in that the fees must be "reasonable." Moreover, substantial evidence supported the trial court's finding of bad faith, where Bruno conceded she had no evidence to support her contention that she had seen other trust documents splitting the estate equally and her father had designated his retirement assets to his two younger daughters during his lifetime, gutting Bruno's claim that her father treated her and her sisters equally.

In re the Marriage of Nakamoto & Hsu (June 2, 2022) 29 Cal.App.5th 457

A needs based attorney fees request will be properly denied where the requesting party has over litigated the case and failed to show reasonable grounds for the request.

BACKGROUND:

In his dissolution proceeding, Hsu joined his siblings and several corporations claiming he was owed $4 million from their parents' estate based upon a handwritten memorandum Hsu had prepared that referenced the $4 million payment despite the fact he and his siblings later entered into a formal, written compromise agreement that did not include it. After receiving $140,000 in attorney from the joined parties, the court denied Hsu's request for additional fees, finding Hsu had overlitigated the case by proceeding to seek enforcement of a document - his handwritten memorandum - he himself conceded was not enforceable and Hsu had not basis for the appeal for which he sought fees. Hsu appealed.

KEY ISSUE:

Whether the denial of a request for attorney fees pendente lite under Family Code Section 2030 was appropriate where substantial evidence supports that the party requesting fees "overlitigated" the underlying case.

RESULT:

Affirmed. A court may award fees under Family Code section 2030 where the making of the fee award, and the amount of the award, are just and reasonable under relative circumstances of the respective parties. While spouses in a dissolution proceeding are entitled to request attorney's fees from joined parties, the fee request must be reasonable, and here Hsu's late fee requests were reasonably denied because he had over-litigated his case by exceeding his trial estimate and seeking to prove the authenticity of documents and events he conceded were illegitimate.

ELDER FINANCIAL ABUSE - WRIT OF ATTACHMENT

Royals v. Lu (July 18, 2022) 81 Cal.App.5th 328

A pre-trial writ of attachment may not be used to secure punitive damages or statutory penalties, including double or treble damages, on a financial elder abuse claim.

BACKGROUND:

After Royals' father/Lu's husband passed at age 99, Royals filed a claim for financial elder abuse against Lu, alleging damages of at least $1,095,000 and requesting punitive damages, statutory penalties, attorney fees and costs. She also sought a pre-trial writ of attachment for $3,440,000, relying solely on her verified petition and without demonstrating how she calculated the requested amount. Despite Royals' failure to substantiate with competent evidence her request for a pre-trial writ, and despite Lu's submission of declarations and evidence in opposition, the trial court issued the attachment order, which Lu appealed.

KEY ISSUE:

A right to attach order is appropriate only if and to the extent the requesting party has supported their request with competent evidence and where attachment law requirements are met.

RESULT:

Reversed. An attachment order is appropriate for a financial elder abuse claim for alleged compensatory damages, attorney fees and costs as long as substantiated by competent evidence, but not for punitive damages or statutory penalties, including double and treble damages.

NO CONTEST CLAUSE ENFORCEMENT

Meiri v. Shamtoubi (July 25, 2022) 81 Cal.App.5th 606

A contestant who untimely files a contest after expiration of the 120 day statutory deadline lacks probable cause to contest, triggering enforcement of a no contest clause.

BACKGROUND:

Mom and dad created a family trust naming their children, including Meiri, remainder beneficiaries. After dad passed, mom properly and timely served notice under Probate Code section 16061.7. 230 days later, Meiri filed her contest petition alleging the trust was the product of her siblings' undue influence and fraud and her father's incapacity. Mom demurred to Meir's petition due to its untimeliness, which fact Meiri conceded, yet she still amended her petition and doubled down, adding further undue influence allegations and adding a claim for financial elder abuse. Mom petitioned to have Meiri's petition deemed a direct contest due to its untimeliness and thereby its lack of probable cause. The trial court agreed and found Meiri in violation of the no contest clause. Meiri appealed.

KEY ISSUE:

Whether an untimely petition can substitute a direct contest and whether it can establish probable cause.

RESULT:

Affirmed. Meiri's untimely petition seeking to invalidate her parents' trust was a direct contest under Probate Code section 21311, regardless of its timeliness. Her untimeliness did, however, establish lack of probable cause, regardless of the validity of her claims. Probable cause may exist due to a procedural deficiency such as Meiri's untimeliness, or a substantive deficiency, such as insufficiently meritorious claims.

PERSONAL REPRESENTATIVE OF ESTATE - RESIDENCY REQUIREMENTS

Estate of Ramsey Walter El Wardani (August 31, 2022) Cite as D079406

Probate Code section 8402 requires a probate estate administrator to be a U.S. Citizen.

BACKGROUND:

Four years into a contested probate between decedent's daughter and new wife, the probate court removed W after learning from a declaration she submitted in support of her estate creditor claim that she was not a U.S. citizen as required by Probate Code section 8402. W had identified a local California address on her probate filings, which was her brother's address and not hers and hid the fact she had retired to Mexico years earlier.

KEY ISSUE:

What constitutes residency for purposes of Probate Code section 8402.

RESULT:

Affirmed. W's 2019 declaration in support of her creditor claim, when her citizenship was not at issue, was more reliable than her 2021 residency declaration, when her citizenship was under review.

HEIR INTERVENTION IN WRONGFUL DEATH LAWSUITS

King v. Pacific Gas and Electric (August 22, 2022) 82 Cal.App.5th 440

There is no categorical prohibition of an heir's ability to intervene in a wrongful death suit.

BACKGROUND:

Decedent died in a helicopter crash. Decedent's former spouse, and mother of decedent's minor child, King, was appointed administrator of decedent's estate by the Alabama probate court. Once appointed, King initiated a wrongful death lawsuit against Pacific Gas and Electric. Decedent's wife filed a motion seeking to intervene to protect her interests. The trial court denied the motion, finding no statutory or case authority allowing an heir to intervene in a wrongful death lawsuit being pursued by an estate administrator. Decedent's wife appealed.

KEY ISSUE:

Whether an heir is categorically precluded from intervening as a matter of right in a pending lawsuit filed by a personal representative to recover damages for wrongful death.

RESULT:

Reversed and remanded. Decedent's wife, as heir, may intervene as long as she is able to meet the statutory requirements for intervention, namely (1) intervention is timely; (2) her interest is related to the pending action; (3) her interest would be impaired if intervention were denied; and (4) the administer could not adequately represent her interest. Remanded to the trial court for determination whether these four prongs were satisfied.

NUNC PRO TUNC CORRECTED JUDGMENTS

Estate of Billy Joe Douglas (September 21, 2022) 83 Cal.App.5th 690

A clerk's renewal of a judgment with a clerical error is subject to nunc pro tunc correction.

BACKGROUND:

In 2008, a $100,000 judgement was entered against the estate administrator for attorney's fees and costs owed to the administrator's counsel. Seven years later, counsel sought to renew the judgment but inadvertently failed to include the administrator's representative capacity, which the court clerk renewed as erroneously presented. Five years later, counsel discovered its error and sought a nunc pro tunc order insert "administrator of the estate" next to the administrator's name. An estate beneficiary opposed the motion, claiming that the law firm's mistake converted the estate obligation into a personal obligation of the administrator. The trial court overruled the objection and granted the motion. The beneficiary appealed.

KEY ISSUE:

Whether the clerk's entry of the renewal order without the proper capacity of the judgment debtor constituted a clerical error subject to nunc pro tunc correction..

RESULT:

Affirmed, relying in part on Civil Code section 3528: "law respects form less than substance."

SPECIAL IMMIGRANT JUVENILE STATUS

Guardianship of Saul H. (August 15, 2022) 13 Cal.5th 827

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:

Saul arrived from El Salvador in the summer of 2018 and moved in with his cousin's husband in Palmdale. Saul filed to appoint his cousin's husband (Rivas) as his guardian and subsequently filed for special immigrant juvenile status. From the time Saul was ten years old until he was fifteen, Saul worked in the fields for up to seven hours a day and would support his family. After Saul 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. Saul 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. Saul appealed and the Court of Appeal affirmed. The California Supreme Court granted review.

KEY ISSUE:

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

RESULT:

Affirmed. The Court of Appeal and the California Supreme Court both held that the order denying the Special Immigrant Juvenile Status ("SIJS") application was final and appealable.

In determining whether an unaccompanied minor should be granted SIJS findings by the probate court, the question is whether "reunification" with his parents is "not ... viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law." Saul had the burden of proof at trial. Saul 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 California Supreme Court held that Saul had to prove his case by a preponderance of the evidence, but that Section 155 did render a child's declaration admissible evidence for the purposes of making Special Immigrant Juvenile Status findings.

The California Supreme Court also held that both the trial court and the Court of Appeal used the incorrect framework in analyzing the evidence, and that the question was whether there was a "substantial risk" of "serious physical harm" as a result of Saul's parents' failure or inability to adequately protect him. The question is whether reunification with the parents is viable. The focus of that inquiry is whether it is workable or practical to force the child to return to live with the parent, not on whether or not harm the child experienced in the past was excusable or the parent's reasons for inflicting it reasonable.

Further, contrary to the rulings of the probate court and the Court of Appeal, the Supreme Court held that whether or not a parent "intended" to abandon a child is not relevant to the inquiry of whether a child is "abandoned" for purposes of the SIJS statutes. Similarly, whether or not the parents' conduct was "blameworthy" is irrelevant to whether Saul was actually abandoned or neglected. Further, in addition to finding "abuse", "neglect", or "abandonment", the probate court can also find whether there is "a similar basis pursuant to California law" for finding that reunification with parents is not viable. The probate court and Court of Appeal failed to consider this as well.

Finally, the probate court inappropriately speculated about the pervasiveness of the conditions Saul faced in El Salvador in determining whether reunification was nonviable. The question is whether the conditions existed under California law and not speculation based on prevailing conditions in other countries. In sum, the case was reversed and remanded to the probate court with directions to reinstate the guardianship and to expeditious issue an order granting SIJS findings.

RESCISSION – UNILATERAL MISTAKE

Estate of Eskra (May 3, 2022) 78 Cal.App.5th 209

A party who fails to read a document or consult with their attorney to gain an understanding of the meaning of the document before signing it may not rescind the agreement for unilateral mistake for which they are responsible for causing.

BACKGROUND:

Widow sought appointment as personal representative of her late husband's estate, which petition the trial court denied based on a premarital agreement waiving any claim to her husband's estate. Widow then sought to have the marital agreement rescinded for unilateral mistake, claiming she and her late husband had believed the agreement applied only in the event of divorce, not death. But Widow testified she had instructed her attorney to delete any "applicable on death" language and thought she had overheard her husband instruct his attorney to do the same. She also admitted that she then failed to read the document or consult her attorney before signing. At trial, the court interpreted Widow's testimony to find the husband knew the agreement applied at death and the Widow's alleged mistake could not act to rescind the agreement for her own failings. Brandy appealed.

KEY ISSUE:

What constitutes unilateral mistake sufficient for rescission.

RESULT:

The appellate court affirmed. To rescind a contract based on unilateral mistake, the proponent of the alleged mistake cannot bear the risk of the mistake. Here, Widow bore the risk of signing a mistaken document by failing to read the agreement or consult with her attorney before signing it.