

Ventura County Bar Association

Trust, Estate & Conservatorship

Annual Litigation Update

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PROBATE LITIGATION

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BREACHES OF FIDUCIARY DUTIES

Pool-O'Connor v. Guadarrama (April 25, 2023) Cite as F083954

Fiduciaries may not use powers under a trust and a power of attorney to favor themselves over other beneficiaries in contravention of the Probate Code and the governing instruments.

BACKGROUND:

Albert and Mabeleen were husband and wife who owned real-estate and a mini-mart in Lebec, California. They had four children. Albert and Mabeleen established their family trust in 1992. Mabeleen died in 2002. In 2012, Mabeleen's nephew, Christopher, began helping Albert manage family finances. In 2013, Albert amended the trust, and executed a pour-over will, and power of attorney. Christopher was named as trustee, executor, and agent, respectively. In 2017, Albert added Christopher as an authorized signer to his checking account. Prior to and after Albert's death, Christopher made substantial withdrawals from the account. Christopher also transferred real property owned by the trust to himself per a purported notice of proposed action, justifying the action because "all beneficiaries consented to this as being consistent with the decedent's wishes and because Christopher has resided there for years, maintaining the property."

One of the children filed petitions (in which two other children joined) to remove and surcharge Christopher for breach of trust and to determine ownership of assets under Probate Code section 850, among other claims. Christopher stipulated to his resignation, but reserved rights, including the right to defend against the surcharge claim and to seek reimbursement of costs and trustee fees. Among other things, the trial court ordered Christopher was ordered to return the real property and \$335,779 to the trust and denied his request for trustee fees. Christopher appealed.

KEY ISSUE:

(1) Did the trial court err by invalidating the transfer of the real property was lawful due to the beneficiaries' failure to object to a notice of proposed action ("NOPA")? (2) Did Christopher breach his fiduciary duties as attorney-in-fact by depositing trust funds into a joint account that had different beneficiaries than the trust and withdrawing funds from those accounts without authority?

RESULT:

The Court of Appeal affirmed. With respect to the NOPA, a trustee may not buy or exchange trust property through the use of the NOPA procedure under Probate Code section 16501. Christopher's argument that he was simply trying to "distribute" the property to himself (rather than to sell or exchange it) was not persuasive as a matter of law or fact. With respect to the deposits of funds, the power of attorney did not authorize Christopher to make gifts to himself in an amount not to exceed the annual federal gift tax exclusion, and only in the amounts that were proportional to Albert's trust. Christopher's deposit, which would have favored him if upheld, violated the power of attorney and Probate Code sections 4264(e) (by creating a survivor interest in the funds) and 4264(f) (by effectuating a change in the beneficiaries who would have otherwise shared in the funds).

FEDERAL SUBJECT MATTER JURISDICTION IN PROBATE MATTERS

***Silk v. Bond* (April 10, 2023) 65 F.4th 445 (9th Cir.)**

The “probate exception” to Federal subject-matter jurisdiction does not apply to in personam contractual disputes unless they involve probating a will, administering an estate, or in rem jurisdiction over property in the custody of the probate court.

BACKGROUND:

Silk provided tax and estate planning services to Bond. The contracts governing these services provided that part of Silk’s compensation would be paid after Bond’s death. After Bond died, Silk filed a \$3.1 million claim in Maryland probate court, which was denied. Silk then sued in the Central District of California based on contractual and promissory estoppel claims. Bond’s Estate filed a motion to dismiss for lack of subject matter jurisdiction and lack of personal jurisdiction. The District Court dismissed the case for lack of subject matter jurisdiction under the “probate exception” to federal court jurisdiction. Silk appealed.

KEY ISSUE:

Did the “probate exception” divest the Federal courts of subject matter jurisdiction over the contractual dispute raised by the denial of a creditor claim?

RESULT:

The United States Court of Appeals for the Ninth Circuit reversed. The “probate exception” as articulated in *Marshall v. Marshall* (2006) 547 U.S. 293, 126 S.Ct. 1735, 164 L.Ed.2d 480, “reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate” and “precludes federal courts from endeavoring to dispose of property” in the custody of a state’s probate court, but “does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.” The Ninth Circuit (which had been reversed in *Marshall*) has held that the probate exception is limited to cases where the federal courts will be called on to “(1) probate or annul a will, (2) administer a decedent’s estate, or (3) assume *in rem* jurisdiction over property that is in the custody of the probate court.” Here, Silk’s dispute plainly did not seek to annul or probate a will. Further, while appraisals are a component of estate administration and adjudicating Silk’s creditor claim did require an appraisal, the appraisal was a function of the contract between Silk and Bond, not the administration of the estate itself. Finally, the nature of the right sued on was contractual as between discrete entities, and therefore it was not an *in rem* proceeding, but in the nature of an *in personam* proceeding. As such, the “probate exception” was not applicable to this matter.

Further, while the District Court had not reached the Estate’s separate argument on lack of personal jurisdiction, the Ninth Circuit ruled that Silk (a California resident at the time of performing the services set forth in the contract with Bond) had made a prima facie case for personal jurisdiction.

ATTORNEYS' FEES

Estate of Kimberly Jean Kempton. 91 Cal. App. 5th 189, 308 Cal. Rptr. 3d 249 (2023)

The probate court has discretion to order the payment of fees owed to an attorney to the attorney's bona fide creditor.

BACKGROUND:

“Adjudicated vexatious litigant and disbarred former attorney” appealed the probate court’s decision allowing the special administrator of the estate to pay his statutory fee to a lienholder on the judgments against the former attorney. Attorney briefly served as counsel to the administrator of an estate. Later, the “adjudicated vexatious litigant” attorney was disbarred due to unethical conduct that led to several judgments against him. Years later, the special administrator filed a final report and petition for approval of final distribution recommending the attorney’s \$1,000 statutory fees be paid to the attorney’s creditor. The probate court approved the payment.

Attorney appealed.

KEY ISSUE:

Whether the probate court abused its discretion in ordering the administrator to pay the attorney’s statutory fee to his creditor.

RESULT:

Affirmed. The appellate court found that the Probate Court did not abuse its discretion in approving payment of attorney’s statutory fee to the third-party who held a judgment lien against the attorney that had been properly presented and served.

AMENDING TRUSTS

Diaz v. Zuniga, 91 Cal. App. 5th 916, 308 Cal. Rptr. 3d 762 (2023)

An amendment must comply with the express processes for amending set forth in the trust instrument.

BACKGROUND:

Settlor created a trust naming himself as trustee. To amend the trust, trustor was required to send a copy of any amendment to the trustee by certified mail. In 2007, Settlor wrote and signed an amendment substantially changing the distributive provisions of the trust. Settlor and mailed the amendment to his attorney, but he did not mail it to himself, by certified mail or otherwise.

The court determined that because Settlor did not follow the specific amendment mechanisms set forth in the trust the amendment was invalid.

The disadvantaged beneficiaries appealed.

KEY ISSUE:

Whether an amendment that fails to follow the specific procedure for amending set forth in the trust is valid.

RESULT:

Affirmed. Following *Balistreri v. Balistreri* (2022) 75 Cal.App.5th 511, review granted, May 11, 2022, S273909 and *King v. Lynch* (2012) 204 Cal.App.4th 1186, 1192, 1193, 139 Cal.Rptr.3d 553, but not *Haggerty v. Thornton* (2021) 68 Cal.App.5th 1003, review granted (D078049), the appellate court found that where a trust sets forth a specific procedure for amending trust terms, that process must be followed. As of the date that these materials were presented *Haggerty* and *Balistreri* had been argued and submitted, but no opinion had been issued.

SPECIAL NEEDS TRUSTEE DISCRETION

McGee v. State Dept. of Health Care Svcs., 91 Cal. App. 5th 1161, 309 Cal. Rptr. 3d 93 (May 24, 2023)

A special needs trustee's discretion set forth in the trust instrument determines the scope of the trustee's abilities and responsibilities.

BACKGROUND:

A special needs trust was created for Dianna McGee in 2012. The trust expressly stated the intent and purpose was to provide resources and benefits when public benefits were insufficient to provide for her needs. The trust allowed the trustee to use discretion to determine when and how to make distributions as appropriate and reasonably necessary. The trust also expressly released the Trustee from liability for making a disbursement in the best interest of the beneficiary, even if that distribution would cause a reduction in or elimination of the beneficiary's right to receive public benefits.

Trustee filed a third accounting, to which the State Department of Health Care Services objected, alleging the trustee used trust funds to make multiple unnecessary purchases. The trial court ruled that whether an expenditure should be reimbursed was fact-specific per the terms of the trust and the specific special needs of the beneficiary.

However, on trustee's fourth accounting, the court ruled it would only allow expenditures for the "very limited purpose" of supporting the beneficiary's special needs.

Trustee appealed.

KEY ISSUE:

Whether the trial court abused its discretion by applying the wrong legal standard when it defined "special needs" more narrowly than provided for under the trust instrument, as well as special needs trust law generally.

RESULT:

Reversed and remanded. Taking into consideration the trust as a whole and the legal context when determining the definition of "special needs," the appellate court found the trial court's interpretation was too narrow. A trustee is allowed to use his own discretion to the extent provided in the trust instrument.

TRUSTEE DISCRETION

Stadel Art Museum v. Mulvihill, 96 Cal.App.5th 283 (October 12, 2023)

Discretionary, precatory language does not obligate a trustee to do anything other than use discretion.

BACKGROUND:

The Stadel Art Museum was sole residuary beneficiary of trust. The trust assets included 50% ownership in four real properties. The other 50% interest in each property was held by a different trust with different beneficiaries. The same trustee administered both trusts.

Trustee filed a petition for instructions due to “a potential conflict in administering the trust” that arose when it was determined that due to their differing tax statuses the beneficiaries of one trust would benefit greater from an in-kind distribution of the real estate while the other beneficiaries would benefit more from a cash distribution.

The court determined the trusts’ language required sale of the real property and ordered the trustee to sell the properties and distribute the cash proceeds.

The beneficiaries appealed.

KEY ISSUE:

Whether the trial court erred in interpreting the trust instrument to require immediate sale of assets when the trust provisions gave the trustee “sole discretion” to distribute trust property in cash or in kind.

RESULT:

Reversed. The trust instruments gave the trustee of each trust sole discretion when dividing and distributing trust assets. Specifically, the trusts provided: “With due consideration for the real estate market, my trustee is requested to sell the real property and items of value left over after above gifts.” The Appellate Court found the word “requested” is not ordinarily or commonly used as a command, and when taken in context with the “sole discretion” given to the trustee, remanded the case so the probate court could instruct the trustee to exercise his discretion in the interest of the beneficiaries.

DISTRIBUTEELIABILITY FOR UNPAID TAXES

United States v. Paulson, No. 21-55197 (9th Cir. May 17, 2023)

Distributions received from a trust estate are subject to disgorgement for unpaid estate taxes.

BACKGROUND:

A \$200 million trust owed \$10 million in unpaid taxes. Trustees entered into an installment payment plan with the IRS, but when the trustees failed to comply with the plan the IRS terminated the plan and sought disgorgement from the trustees and beneficiaries of monies paid to them.

The trial court determined that some beneficiaries were not liable for the taxes because they were not in possession of the estate property on the date of death.

The IRS appealed.

KEY ISSUE:

Whether those who receive estate property are liable for unpaid tax liabilities attached to those assets.

RESULT:

Reversed and remanded. The Internal Revenue Code imposes personal liability on spouses, transferees, trustees, surviving tenants, persons in possession by way of exercise of power of appointment, and beneficiaries for unpaid estate taxes even when they have received distributions after the date of death.

TESTAMENTARY INTENT

Estate of Berger, No. B321347 (Second Appellate District May 25, 2023)

Extrinsic evidence is available to prove whether a decedent intended a document to serve as a will.

BACKGROUND:

In 2002, Melanie and Maria were in a romantic relationship. Around that time, Melanie handwrote a will leaving all of her assets to Maria and gave her a copy. In 2003, Melanie and Maria broke up. In 2020, Melanie became religious and told her neighbors that she wanted to leave her assets “to the church.” Melanie did not memorialize her wishes.

Melanie passed away in 2020. Her pastor located a copy of the will leaving everything to Maria. The pastor informed Melanie’s sister and Maria of the will. They did not probate it.

In 2021, Maria petitioned to probate the will. Melanie’s sister, her sole intestate heir, opposed the petition. The trial court denied the petition because the Melanie’s letter did not comply with the will formalities set forth in the probate code. The court had doubts about the context of the letter as well as Melanie’s intention based on extrinsic evidence, including communications with Maria and Melanie and Maria’s daughter.

Maria appealed.

KEY ISSUE:

Whether extrinsic evidence is admissible to determine whether a document was intended to be a will even if the terms are unambiguous.

RESULT:

Reversed. Even where a document fails to comply with statutory will requirements, a court may consider extrinsic evidence to determine testamentary intent. A court may do this even where the document is unambiguous because the question of intent goes to the purpose of the document itself, rather than its dispositive provisions or other directives.

AMENDMENTS TO PLEADINGS

Dupree v. CIT Bank, N.A., 92 Cal.App.5th 142 (May 31, 2023, modified June 28, 2023)

Leave to amend should be liberally granted, particularly to address pleading defects.

BACKGROUND:

A trust attorney filed a complaint naming a trust as plaintiff, rather than the trustee. The trial court ruled that naming the trust as plaintiff made the complaint “void” and dismissed the complaint.

KEY ISSUE:

Whether a trial court abused its discretion in denying leave to amend to correct the identity of the plaintiff party.

RESULT:

Reversed. A court has the power to determine jurisdiction and allow amendments, which it should do liberally. Defects such as a mistake in naming an appropriate party - trustee vs. trust - do not divest a court of jurisdiction justifying dismissal.

Spears v. Spears, No. A164622 (First District, Division Four, December 19, 2023)

An amended pleading that states a valid claim should be allowed.

BACKGROUND:

Decedent created a revocable trust in 2018 and funded it with separate property. Decedent then passed in late 2020, at which time his wife became successor trustee. No probate was opened.

In April 2021, Decedent's son filed a petition to remove wife as trustee, to obtain an accounting, and to assert a claim as a creditor of the trust. The son's creditor's claim was based upon two oral agreements he alleged Decedent had made: (1) to pay him money Decedent had received from the State of California in 2012; and (2) to pay for the purchase of a mobile home made in the late 1990s.

Wife demurred, arguing she paid the son his inheritance after he filed his petition, and, therefore, he no longer had standing to request an accounting or seek her removal. She further alleged the agreements described by the son did not have "sufficient specificity." Wife also objected to the creditor's claim on the basis the son's claims needed to be brought against Decedent's estate, not the trust, and the claims were barred by the statute of limitations and statute of frauds. The court sustained the demurrer with leave for the son to amend his "creditor's claim."

A couple of months later, son filed a document he titled "Creditor's Claim" based upon the same oral agreements asserted in his petition, although he added that the Decedent allegedly had orally agreed to pay him the State of California money on January 15, 2012, and Decedent agreed to make periodic payments until he passed away, at which time the debt would become due and payable in full. As to his claim for reimbursement of the mobile home funds, son added that the oral agreement was made in 1996 or 1997 and that Decedent and his wife were to pay \$30,000 in monthly payments of \$300, and when the Decedent passed away the debt would become due and payable in full.

When son failed to file an "amended petition," the court dismissed the matter and son appealed.

KEY ISSUE:

Whether a creditor may file suit to recover a settlor's debt from the trust estate when no probate estate has been opened and the trustee has not initiated the optional trust claims procedure.

RESULT:

Reversed in part. Affirmed in part. The Court of Appeal ruled son's "creditor's claim" was an amended pleading that reaffirmed his claim against the Decedent's trust. On the statute of limitations issues, the court found that the creditor's claim on the mobile home issue was time-barred. The court relied on simple math, calculating that the plan son alleged - \$30,000 in \$300 installments - would equal 100 payments over 8 years, meaning the last payment would have been due long before Decedent passed. Conversely, the appellate court found the son's creditor's claim for the \$60,000 Decedent received from the State was not time-barred. Specifically, the court found that even if the agreement was made over ten years prior, there was not enough information plead for the court to determine if the debt should have been due to be paid off at least two years prior to the Decedent's passing.

PERSONAL REPRESENTATIVE MUST BE REPRESENTED

Estate of Sanchez, Case No. H045037 (Sixth District, August 9, 2023)

An executor who pursues claims on behalf of an estate must be represented.

BACKGROUND:

Decedent passed away in 2016 and petitioner was appointed executor of his estate. Decedent's will left his separate property and his one-half interest in his community property to his children, disinheriting his wife.

Executor filed for partition of real property and asserted related causes of action, including claims the wife had engaged in fraud and other improper conduct regarding her misuse of estate funds. Wife objected on the grounds Executor could not prosecute the estate's claims in propria person capacity.

The probate court agreed, finding the executor's case primarily asserted civil claims a non-attorney could not properly prosecute in propria person.

Executor appealed.

KEY ISSUE:

Whether a personal representative can pursue an estate's civil-styled claims in propria persona.

RESULT:

Affirmed. The Appellate Court found the probate court properly determined the personal representative, a non-lawyer, could not adequately prosecute legal claims on behalf of the state and required counsel to do so.

BLOCKED ACCOUNT LIABILITY

Fox & Fox v. Chase Bank, 95 Cal.App.5th 182 (September 5, 2023)

Whether an intended beneficiary of a blocked account's assets may sue a bank for releasing those funds in whole or part to someone other than the court-ordered recipient.

BACKGROUND:

The Law Firm of Fox & Fox represented the administrator of a probate estate. During the administration of the estate, the court confirmed the sale of estate real property and ordered the proceeds be deposited into a blocked account. Chase opened the blocked accounts, acknowledged them as such, and certified no withdrawal would be permitted without a court order. The administrator was the sole account holder and signatory on the account.

At the end of the administration, the court authorized payment of statutory fees to the administrator and the law firm, with the remaining amounts to be paid to creditors. The administrator went to Chase with one of the firm lawyers and presented the order for final distribution. Chase reportedly agreed not to release any funds without both the attorney and the administrator being physically present.

The administrator then went back to the bank without the attorney, took all the money, and disappeared. The law firm sued Chase for negligence.

The trial court granted Chase summary judgment, agreeing Chase owed no duty to the law firm.

KEY ISSUE:

Whether a bank owes a duty to an intended recipient of blocked account assets as set forth in a court order.

RESULT:

Reversed. The Appellate Court held the law firm was an intended beneficiary of the blocked account as set forth in the court's order, and the court's order did not authorize Chase to distribute the entirety of the account's assets to the administrator.

NOTICE AND DUE PROCESS

Bailey v. Bailey 96 Cal.App.5th 269 (October 10, 2023)

Whether a beneficiary who is not served with notice of a probate petition that results in the appointment of an administrator may be time-barred from probating a later found will.

BACKGROUND:

Decedent's brother petitioned for probate alleging Decedent died intestate. As such, only Decedent's intestate heirs were notified. While awaiting appointment, the not-yet-appointed administrator found a 2001 will and lodged it with the court. The will named as beneficiaries other individuals not previously noticed. In January 2021, the administrator told the court he did not intend to ask the court to admit the will to probate and renewed his request that he be appointed administrator. He told the court he believed the will's validity could be litigated once other estate issues had been addressed. The court agreed and appointed him as administrator.

The administrator served the will's beneficiaries with a document titled "Notice to Potential Beneficiary of Petition for Letters of Administration under Probate Code Section 8226" on March 4, 2021. On May 17, 2021, the administrator filed his final inventory and appraisal. Ten days later, a will beneficiary filed a petition to probate the 2001 will. One of the intestate heirs objected, alleging the petition was untimely.

The court overruled the objection and admitted the petition on the grounds the will beneficiary had never been served with the original intestate probate petition.

KEY ISSUE:

Whether the time limits in Probate Code section 8226(c) apply when the proponent of a later-found will was not served with notice of the prior probate petition.

RESULT:

Affirmed. The Appellate Court found that the post-hearing notice sent to the will beneficiaries was insufficient under the Probate Code. The notice was sent two months after the hearing on the intestate probate petition. The court had already appointed the administrator and the will beneficiaries did not have an opportunity to be heard.

STANDING

Colvis et al. v. Binswanger et al., 96 Cal.App.5th 393 (October 13, 2023)

Any interested party may participate in any proceeding that may affect it.

BACKGROUND:

A trust held a 70% share of a company. The trust beneficiaries owned the remaining 30% in equal shares. Two trust beneficiaries filed a petition seeking to instruct the trustee to direct the Company to borrow money to pay estate taxes owed by the trust. The company filed a status report responding to the petition. Petitioners objected to the company's filing saying that it lacked standing.

The trial court agreed.

The company appealed.

KEY ISSUE:

Whether an interested party who is neither a fiduciary, beneficiary nor heir has standing to participate in probate proceedings that may affect it.

RESULT:

Reversed. Even though Probate Code section 17200 provides that only a trust or beneficiary may petition the court concerning the internal affairs of the trust, there is no prohibition on other interested persons responding to such a petition. Probate Code section 1043(a) allows "interested persons" to respond or object at or before a hearing in a trust proceeding. The matter was remanded to the probate court to determine whether the company was an interested party to the proceeding.

PROVING PARENTAGE

Estate of Martino, Case No. D080846 (Fourth District Division One, October 18, 2023)

A stepchild may prove parentage in various ways beyond Probate Code section 6454, including demonstrating that they were held out by the decedent as their child.

BACKGROUND:

Stepchild's mother married Decedent in 1966 and divorced him in 1972. During the marriage, the stepchild lived with Decedent. Even after the divorce stepchild maintained a close relationship with Decedent, and because he had little contact with his biological father he considered Decedent his "true father." Decedent always referred to stepchild as his son, and Decedent's friends similarly called him Decedent's son.

Following Decedent's passing, stepchild filed a petition seeking an order declaring he was Decedent's lawful "stepchild heir" under Probate Code section 6454. He later amended his petition to claim heirship through equitable adoption under Probate Code section 6455. He amended again to claim heirship under Probate Code section 6453(a) and (b)(2) allowing for a "natural parent and child relationship" to be established for purposes of intestate succession when (1) the relationship is presumed and not rebutted pursuant to the Uniform Parentage act (UPA) in the family code, or (2) in actions brought under Family Code section 7630(c), where clear and convincing evidence establishes the parent has openly held out the child as their own. Family Code section 7611,

Decedent's biological children objected, arguing stepchild lacked standing to claim natural parentage because it was undisputed he was not a biological child of Decedent.

The trial court found the objectors had failed to rebut stepchild's evidence satisfying the presumption of parentage.

Decedent's biological children appealed.

KEY ISSUE:

Whether a stepchild who cannot satisfy Probate Code section 6454 may still inherit if held out by the decedent as their child.

RESULT:

Affirmed. The Court of Appeal found stepchild had standing to claim natural parentage for purposes of inheriting. The Court determined Probate Code section 6454 was not the exclusive statutory method for a stepchild to establish a right to inherit, highlight that a stepchild may establish a right to intestate succession under Family Code section 7611, which creates a presumption of natural parentage where the parent "receives the child into their home and openly holds out the child as their natural child."

CARE CUSTODIAN DETERMINATION

Robinson v. Gutierrez, Case No. C097301 (Third District, December 26, 2023)

Room and board constitutes “remuneration” when determining care custodian status.

BACKGROUND:

Gutierrez moved in with Decedent in 2015. In exchange for room and board, Gutierrez performed household duties and provided care to the Decedent. The relationship lasted nearly three years.

In 2018, Decedent executed a joint tenancy deed to her residence naming defendant as joint tenant. Later that same year, Decedent updated her estate plan left her entire estate to the defendant. Decedent passed shortly thereafter.

Decedent’s intestate heirs sued, alleging the joint tenancy deed and estate plan were the product of Gutierrez’s financial abuse and undue influence. The trial court found the burden-shifting presumption of undue influence against “care custodians” did not apply to Gutierrez because she did not receive “remuneration.” Having failed to shift the burden to Gutierrez to prove the deed and estate plan were free of undue influence, the court found no undue influence or financial elder abuse.

The intestate heirs appealed.

KEY ISSUE:

Whether a caregiver who received free room and board in exchange for care services was subject to the burden-shifting presumption of fraud or undue influence applicable to care custodians.

RESULT:

Reversed. The Court of Appeal, relying on the legislative intent of Probate Code section 21362, determined the legislature did not intend “remuneration” to only refer to taxable income, and room and board ordinarily considered a form of “remuneration.” The Court of Appeal further opined that had the legislature meant to exclude room and board, it would have specifically done so.

STATUTES OF LIMITATIONS

Hamilton v. Green, No. B323621 (Second District, Division Four, December 28, 2023)

Whether a civil complaint sounding in a trust contest is time-barred by 16061.7 if filed more than 120 after notice is served.

BACKGROUND:

Decedent passed leaving one living child and two grandchildren from a previously-deceased child. Child, successor trustee of Decedent's trust, informed the grandchildren they were not beneficiaries of the trust. When they asked for a copy of the trust, trustee refused.

Grandchildren filed a petition seeking the trustee's removal for her failure to provide them with a complete copy of the trust. Four months later, the trustee served them with a notification of irrevocability by trustee under Probate Code section 16061.7, including: "you may not bring an action to contest the trust more than 120 days from the date the notification by trustee was served upon you."

Eleven months later, the grandchildren sought to amend their petition to seek to invalidate the amendment to the trust that disinherited them and gave Decedent's estate to the child. The court denied this motion.

Four months later, the grandchildren filed a civil complaint against the trustee alleging (1) interference with inheritance rights; (2) interference with prospective economic advantage; (3) interference with contract; (4) conversion; (5) quiet title; (6) breach of fiduciary duty and (7) for an accounting. The complaint asserted the trust terms prior to the amendment entitled them to their father's interest in the trust, and that the amendment disinheriting them was a forgery created by the trustee to steal their inheritance.

The trustee demurred on the grounds the complaint was time-barred because the "practical effect" was a challenge to the trust. The court sustained the demurrer without leave to amend.

The grandchildren appealed.

KEY ISSUE:

Whether the grandchildren's civil complaint was tantamount to "an action to contest a trust" within the meaning of the probate code and, therefore, subject to the 120-day deadline.

RESULT:

Affirmed. Because the "practical effect" of the complaint was to invalidate the trust amendment, the 120-day statute of limitations applied and the petition was time-barred.

ENFORCING ASSIGNMENTS

Estate of Flores, No. B320383 (Second District, Division Three, January 2, 2024)

An assignment of heirs that was neither raised nor determined as part of a determination for heirship remains enforceable.

BACKGROUND:

Decedent passed intestate. An heirship finder firm identified decedent's maternal uncles as next of kin and notified them of their right to inherit. One of the uncles thought it was a "scam" and agreed to assign his interest in the estate to his brother, which he did. Assignee brother filed a petition for heirship and petition for probate seeking appointment of a private professional fiduciary as executor of the estate. The court granted both petitions.

Assignee brother died before the estate was distributed. During the course of the administration of his estate, the executor sought to enforce the assignment, while the assignor brother sought to enforce the determination of heirship – i.e. that he and his brother were the sole heirs of decedent – and asked the court to ignore the assignment because it had not been raised during the petition for heirship and the court's order on the petition for heirship ruled that the brothers were each entitled to 50% of the estate. The trial court rejected assignor's position.

Assignor brother appealed.

KEY ISSUE:

Whether the assignment was enforceable after assignee failed to raise the assignment in his probate code section 11700 heirship determination petition.

RESULT:

Affirmed. A petition to determine heirship acts only to identify those entitled to inherit, to the exclusion of other potential interested parties, and here the issue of the assignment was neither raised nor litigated. Similarly, the petition for final distribution was supplemented to address the assignment.

VACATING CONSERVATORSHIP ORDERS

Conservatorship of the Estate of Thomas S. Tedesco, 91 Cal. App. 5th 285, 308 Cal. Rptr. 3d 296 (2023), reh'g denied (May 22, 2023), review denied (Aug. 23, 2023)

Denial of petition to vacate orders establishing a conservatorship will not be disturbed barring abuse of discretion by the trial court.

BACKGROUND:

A conservatorship of the estate of Thomas Tedesco was established in 2015 to protect him from the undue influence of his wife, her children, and their associates. Thomas's wife, Gloria, was present at the appointment hearing and stipulated, through counsel, to the appointment of an independent private professional fiduciary as conservator of the estate. Six years later, having failed repeatedly to end around the conservatorship, the conservatee's court appointed counsel, and the conservatee's children, Gloria sought to terminate the conservatorship by petitioning to vacate the 2015 order establishing the conservatorship and all subsequent orders emanating from it. The trial court denied the petition. Gloria appealed.

KEY ISSUE:

Whether the trial court abused its discretion in denying Gloria's petition.

RESULT:

Affirmed. Each of Gloria's "myriad of disjointed arguments" was rejected by the Court of Appeals. One, Gloria had already challenged and lost the challenge to the establishment of the conservatorship in 2018. Two, the proceedings that established the conservatorship were procedurally sound, and, therefore, the conservatorship was no void *ab initio*. Three, Thomas had court appointed, independent counsel, and because counsel must be approved by the court – and Gloria's nomination of her daughter's boss as Thomas' counsel was denied by the court – Thomas was not denied his fundamental, statutory right to counsel. Four, while Gloria has standing to petition to terminate the conservatorship, she has no standing to assert Thomas' rights. Five, Thomas' current competence is material to the maintenance of the conservatorship, despite Gloria's protestations to the contrary. Six, the non-appointed counsel championed by Gloria is disqualified from representing Gloria and Thomas because their interests conflict. Seven, the probate court has exclusive concurrent jurisdiction over any issue affecting the conservatorship, including disqualifying the lawyers Thomas retained in the separate civil actions brought without the consent of the conservator.

DISCOVERY SANCTIONS

Tedesco v. White , No. G061197 (Fourth District, Division Three, October 27, 2023).

Discovery sanctions are appropriate on a motion to quash where the documents sought are overbroad and not reasonably crafted to result in relevant evidence.

BACKGROUND:

Co-trustees filed a petition to validate the conservatee trustor's 2013 trust amendment and to invalidate a purported 2020 amendment to the trust.

The conservatee's wife served a subpoena upon the law firm that previously represented the conservator. Conservator moved to quash the subpoena and requested \$12,105 in sanctions. Conservator argued the appellant's actions violated a restraining order precluding her discovery, the appellant lacked standing, the appellant failed to serve a notice to consumer as required by California law, and the subpoena was overly broad, unduly burdensome, and reflected an improper effort to seek private, confidential financial records.

The court granted the motion to quash and awarded \$6,000 in sanctions. Wife appealed.

KEY ISSUE:

Whether the court's \$6,000 monetary sanction was appropriate.

RESULT:

Affirmed. The Court of Appeal determined the lower court did not abuse its discretion because the requests made by the appellant subpoena were "broadly drawn," as they were without limitation as to time, nor was the wife able to show how the documents sought would show fraud. After balancing the interests of the appellant's right to secure relevant evidence with the conservatee's right to privacy, the motion to quash and sanctions were properly granted.