Trust, Probate & Conservatorship Annual Litigation Update

Wednesday, November 4, 2020

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Probate Code Section 859 Damages

Levin v. Winston-Levin (2020) 39 Cal. App. 5th 1025

A finding of bad faith is prerequisite to an award of double damages under Probate Code section 859.

BACKGROUND:

Robert Levin established a revocable Trust, which was amended several times. Trust amendments made in in 2008 and 2012 became objects of controversy after Robert's death in 2015. Robert's daughter from a prior marriage, Elizabeth, sued Robert's widow, Debra Winston-Levin, for return of Trust property pursuant to Probate Code section 850 and for double damages pursuant to Probate Code section 859. Specifically, Elizabeth alleged that the trust amendments from 2008 and 2012, which caused a decreased in her share of trust assets, were obtained by undue influence and should be voided.

The trial court delivered mixed results. It ruled that Debra did not obtain the 2008 amendment by undue influence, but that Debra did not rebut the presumption of undue influence concerning the 2012 amendments. The trial court voided the entire 2012 amendment and ordered Debra to return property obtain under the 2012 amendment.

Elizabeth appealed. She argued that the finding of undue influence compelled a finding that Debra was liable for financial abuse of an elder, which would mandate double damages under Probate Code Section 859. She also argued that undue influence tainted the 2008 amendment and that the court erred in voiding the entire 2012 amendment instead of simply portions that helped Debra.

KEY ISSUE:

Whether a finding of bad faith is required in order to warrant double damages under Probate Code section 859.

RESULT:

The Court affirmed and held that a finding of bad faith is a prerequisite to an award of double damages under Probate Code section 859 based on a theory of undue influence. The Court of Appeal engaged in statutory interpretation to arrive at this conclusion. The Court of Appeal noted that Debra argued that double damages by Welfare and Institutions Code section 15610.30 (a)(3) were allowable under Probate Code section 859's third prong: "financial abuse of an elder/dependent adult." However, the Court of Appeal noted that that section mirrored the second prong of section 859:

taking property through undue influence "in bad faith". It noted, citing

the plain language, that if bad faith was removed from undue influence, it would render it surplus. Additionally, it explored the legislative history, which suggested that bad faith was required for double damages. Moreover, it pointed out that undue influence means "excessive persuasion" which does not require bad faith such that Elizabeth's contention is inconsistent. As such, it did not eliminate the bad faith requirement for double damages.

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

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

BACKGROUND:

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

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

In addition to ordering that the woman reconvey title to the wrongfully taken real property back to the decedent's estate, pursuant to Probate Code section 856, the trial court likewise ordered that the woman pay a penalty of $10,296,000 – i.e. twice the value of the aforementioned real property – pursuant to Probate Code section 859.[1] In so doing, the trial court relied on *Estate of Kraus* (2010) 184 Cal.App.4th 103 which applied the same interpretation of how damages should be calculated under Section 859. The woman argued, relying on *Conservatorship of Ribal* (2019) 31

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

Cal.App.5th 519, that the trial court erred in making this calculation—claiming that it amounted to treble damages in contravention of Section 859 which only allowed for the recovery of damages of twice the value of the property recovered.

KEY ISSUE:

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

RESULT:

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

[2] The Court of Appeal affirmed the trial court's judgment with respect to the damages calculation under Section 859, but reversed in part relative to an additional surcharge

which was erroneously calculated in the trial court, but which is not relevant for the purposes of the key question presented that is at issue here.

Attorneys' Fees

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

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

BACKGROUND:

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

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

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

KEY ISSUE:

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

RESULT:

The Court of Appeal affirmed. Examining the statute and legislative history, it held that Government Code § 12598 does not require trial courts to make findings about the extent of success in litigation when awarding reasonable attorneys' fees to the attorney general. Therefore, the trial court's statement of decision was proper, despite the lack of analysis of the attorney general's success in litigation.

Moreover, the Court of Appeal further explained held the amount of attorneys' fee award was not an abuse of discretion, even though the attorney general only won on 7 of 12 causes of action because succeeded in removing Shine as trustee, in proving some of his conduct was grossly negligent, and correcting a breach of trust.

Anti-SLAPP/No Contest Clauses

Key v. Tyler (2020) 34 Cal. App. 5th 505

California's anti-SLAPP statute applies to no contest clauses. For the purpose of a no contest clause, a direct contest may include a defense of the validity of a trust instrument.

BACKGROUND:

Tyler, Key, and Potz are the daughters of Thomas and Elizabeth Plott, who owned a successful family nursing home business. Thomas and Elizabeth created the Trust in 1999 and amended it in 2002 and 2003. Thomas died in 2003. On Thomas's death, the trust divided into three trusts: the survivor's trust, the marital trust, and the exemption trust. The Trust contained a no-contest clause.

In 2006, Tyler actively participated in efforts to obtain an amendment to the Trust that would benefit her. She actually revised the eventual amendment, such the a trial court ruled that there was "NO evidence that the [2007] Amendment represents the desires or choices of Mrs. Plott." Mrs. Plott eventually signed the 2007 Amendment, which massively benefitted Tyler to the detriment of her sisters.

When Mrs. Plott died, Key filed an invalidity petition, which was granted by the trial court and affirmed by the court of appeal. On remand, Key filed a No Contest Petition, which Tyler then moved to strike. The trial court ruled that the anti-SLAPP statutes applied to action to enforce a no contest clause. The court then ruled on the second prong of the anti-SLAPP procedure that Key failed to show a probability of success on her No Contest Petition. It concluded that because Tyler defended an action, it could not enforce the Trust's No Contest Clause. The court also found that Key had not shown Tyler lacked probable cause to defend the 2007 amendment because the case was difficult to decide. The court denied Key's motion for attorney's fees as she failed to specify a proper basis for reimbursement.

KEY ISSUE:

Whether (1) the anti-SLAPP statute applies to No Contest Petitions and (2) whether a direct contest for purposes of a No Contest Petition applies to defense of a trust amendment.

RESULT:

The Court of Appeal reversed and remanded both orders. Concerning the anti-SLAPP motion, the Court of Appeal held that the anti-SLAPP statute applies to No

Contest Clauses and a defense of an amendment to a trust can constitute a

direct contest for purposes of a No Contest Clause. It explained that Key's No Contest Petition arose from protected conduct and that no exceptions challenged the plain language of the anti-SLAPP statute. It then noted that Key met her burden on the second prong of the anti-SLAPP procedure because Tyler's defense of the 2007 statute was a direct contest. It pointed out that Probate Code section 21310 defines direct contest as contest that "alleges the invalidity of a protected instrument or one or more of its terms" based on certain enumerated grounds, including the "revocation of a trust pursuant to Section 15401." The Court of Appeal then reasoned that because the result of a successful defense by Tyler of the 2007 Amendment would revoke a portion of the Trust, it met the requirements of the Probate Code. Furthermore, the Court of Appeal evaluated whether Key proved probability of success on the merits. It stated that Key had the burden of proof to show Tyler acted without probable cause in her defense of the 2007 amendment, but pointed out that the Statement of Decision laying out Tyler's undue influence showed Tyler lacked probable cause and that Tyler was collaterally estopped from challenging those findings. As to the attorneys' fees, the Court held that key had contractual and equitable theories for attorneys' fees based in the language of the Trust's No Contest Clause.

Standing to Contest

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

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

BACKGROUND:

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

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

KEY ISSUE:

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

RESULT:

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

Conservatorships – Appealability

Conservatorship of D.C. (2020) 39 Cal. App. 5th 487

A conservatee could not appeal an order granting letters of conservatorship after a jury trial on the same issue when the time to appeal had run.

D.C. had a significant history of psychiatric illness and was admitted to a psychiatric hospital in July 2017. In August 2017, the public guardian was appointed as a temporary conservator. A conservatorship hearing was held where D.C.'s counsel represented that D.C. would submit to the conservatorship. The conservatorship was granted in an order from October 2017. D.C. did not appeal the order.

Unsatisfied, D.C. filed a demand for a jury trial in January 2018. A jury found a conservatee gravely disabled under the Lanterman-Petris-Short Act. It found D.C. suffered from schizophrenia, was unable to accept voluntary treatment, and was unable to provide for her personal needs for food, clothing, and shelter.
The trial court ordered that the conservatee remain under the conservatorship for four months and that all prior orders would remain in effect.

The conservatee appealed. She argued that the trial court failed to advise her of right to a timely jury trial, lacked authority to accept a submission on a petition without her consent, and that the belated jury trial did not cure the prejudice.

KEY ISSUE:

Whether the conservatee's failure to file an appeal of the order granting conservatorship letters bars appellate review.

RESULT:

The Court of Appeal held that D.C. could not appeal after the jury trial. It reasoned that because the October order granting letters of conservatorship was appealable, the merits of that order were not appealable unless completed in the time period for appeal. Therefore, the jury trial did not have the effect of tolling any time period to appeal.

Conservatorships -- LPS

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

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

BACKGROUND:

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

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

KEY ISSUE:

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

RESULT:

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

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

Conservatorship of D.P. (2020) 41 Cal. App. 5th 794

A finding that a conservatee is gravely disabled does not required a jury instruction that the conservatee is unwilling or unable voluntarily to accept meaning treatment.

BACKGROUND:

The public guardian of Los Angeles County filed a petition under the Lanterman-Petris-Short Act for appointment as the conservator of D.P., alleging he was gravely disabled from a mental disorder. The trial court held D.P. was gravely disabled and granted the public guardian's petition.

D.P. appealed arguing that trial court failed to instruct the jury on an element necessary to the gravely disable finding. Particularly, D.P. contends that the probate court, using CACI 4000, failed to inform the jury that it must be shown "that the conservatee is unwilling or unable voluntarily to accept meaning treatment." Instead, the probate court, under CACI 4002, slightly modified the instruction to read " In determining whether [D.P.] is presently gravely disabled, you may consider whether he is able or willing voluntarily to accept meaningful treatment. He argues that the omission of the specific element from CACI 4000 reduced the burden of proof to "less than beyond a reasonable doubt."

KEY ISSUE:

Whether the probate court was required to instruct the jury with CACI 4000 third element.

RESULT:

The Court affirmed, and held that the instruction was proper because D.P.'s unwillingness or inability to accept voluntary meaningful treatment was not a required element under the applicable statute for appointment of a conservator, Probate Code section 5008 (h)(1). The Court arrived at this conclusion by noting an instruction given in the language of the statute is properly given. The language concerning voluntary, meaningful treatment was not present, so the instruction was proper. Additionally, it noted case law has not considered voluntary meaningful treatment as a dispositive factor in determining grave disability in other contexts.

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

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

BACKGROUND:

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

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

KEY ISSUE:

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

RESULT:

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

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

Conservatorship of Bryan S. (2019) 42 Cal.App.5th 190

In LPS conservatorship proceedings, proposed conservatees, unlike others subject to civil commitments (e.g. people found not-guilty by reason of insanity ("NGIs") sexually violent predators ("SVPs") and mentally disordered offenders ("MDOs")), do not have the right under the Equal Protection Clause of the U.S. and CA Constitutions, to refuse to testify at trial because proposed conservatees – unlike NGIs, SVPs, or MDOs – have not committed a criminal act.

BACKGROUND:

A schizophrenic man – after being arrested for resisting arrest when sheriff's deputies responded to a woman's call that he yelled at and chased her while she walked her dog – was determined incompetent to stand trial. After treating the man for two years, the hospital reported that it was unlikely he would soon regain competency, and it recommended the initiation of conservatorship proceedings. The public guardian thereafter did so. Although the proposed conservatee objected to being permanently conserved, the public defender did not object when he was called as a witness to testify.

Following testimony and closing arguments, the trial court concluded that the public guardian had established that the proposed conservatee was gravely disabled as a result of a mental disorder and was currently unable to provide for food, clothing, or shelter, and therefore appointed the public guardian as the conservator for a one year period. The proposed conservatee appealed, arguing that requiring him to testify violated his equal protection rights because others who are subject to different kinds of civil commitments (e.g. NGIs, SVPs and MDOs) cannot be compelled to testify.

KEY ISSUE:

Whether proposed LPS conservatees are similarly situated – for the purposes of the Equal Protection Clause of the U.S. and CA Constitutions – with NGIs, SVPs and MDOs.

RESULT:

The Court of Appeal affirmed the trial court's ruling, appointing the public guardian as conservator. In its reasoning, the Court explained that proposed LPS conservatees were not similarly situated to NGIs, SVPs or MDOs because proposed conservatees have not committed a criminal act. This distinction was relevant to the Court because, as it explained, the purpose of civil commitments for NGIs, SVPs, and MDOs is to protect the public from people who have been found to be dangerous to others and who need treatment for a mental disorder. And, the purpose of these civil commitments stands in contrast with the purpose of the LPS Act, which the Court explained was to provide evaluation and treatment of persons with mental health disorders. The Court further explained that there are far more placement options for conservatees, and these options include noninstitutional settings because courts must determine the least restrictive and most appropriate placement for conservatees, which includes placing them with family or friends.
The Court determined that these differences were fatal to the proposed conservatee's equal protection argument.

Intent of the Testator/Settlor

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

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

BACKGROUND:

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

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

KEY ISSUE:

Whether clear and convincing evidence supported reformation of the will.

RESULT:

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

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

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

BACKGROUND:

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

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

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

KEY ISSUE:

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

RESULT:

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

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

Pena v. Day (2019) 39 Cal.App.5th 546

Changes set forth by interlineation on revocable trust documents, which had been delivered to the settlor's attorney but not formally prepared for signature before the settlor's death, did not effectively modify the trust, even though, in the holographic will context, such interlineations would have modified the will.

BACKGROUND:

The decedent settled a trust in 2004 which required in pertinent part that any amendments be made by written instrument signed by the settlor and delivered to the trustee. In 2008, the decedent amended the trust pursuant to this requirement. In 2014, the decedent called an attorney, seeking his assistance in making changes to his estate planning documents. The attorney asked the decedent to send copies of these documents to his office and "put in writing the proposed changes he was considering." In response, the decedent made certain interlineations to the trust which, among other things, were intended to add the appellant as a beneficiary thereunder. The decedent sent the interlineated first amended trust instrument, along with a clean version of the original trust with post-it note to his attorney saying, "Hi Scott, [¶] Here they are. First one is 2004. Second is 2008. Enjoy! Best, Rob." These documents were sent to the attorney for the purpose of having a second amended trust drafted based on the decedent's aforementioned interlineations. The decedent died before the draft was finalized and had the opportunity to sign.

The successor trustee filed a petition for instructions as to the validity of the interlineations as an amendment to the trust. The successor trustee thereafter filed a motion for summary judgment thereon, asserting that the interlineations did not amount to an amendment as a matter of law. The trial court granted summary judgment.

KEY ISSUE:

Whether the decedent validly amended the trust when he made handwritten interlineations thereto and sent it to his attorney accompanied by a signed post-it note explaining the nature of the enclosed documents.

RESULT:

The Court of Appeal affirm the trial court's grant of summary judgment. In so doing, it explained that, under Prob. Code, §§ 15401, subd. (a), 15402, a revocable trust may be revoked, in whole or in part, (1) by the method provided for in the trust instrument, or (2) by a writing, other than a will, signed by the settlor or person holding the power of revocation, and that the same procedure applies to modifications, unless the trust instrument provides otherwise. And, since the trust at issue here specifically required that amendments be made by written instrument signed by the settlor and delivered to the trustee, the decedent's interlineations were not valid absent a signature. The Court further explained that the interlineations, despite needing to be read in the context of the whole trust, constituted a separate instrument and therefore the trust's signature did not cover them.

The Court likewise rejected the appellant's assertion that the signed post-it note satisfied the signature requirement because, as it explained, if the decedent intended the interlineations and signature on the Post-it note to amend the trust by themselves, there would have been no need to have the lawyer prepare the amendment for his signature. The Court also rejected the appellant's analogy to case law in the holographic will context were interlineations did constitute a valid amendment. Specifically, the Court explained that, since holographic wills were already in the handwriting of the testator, interlineated additions became part of the document, which is not the case for trusts.

Fiduciary Duties

Estate of Sapp (2020 36 Cal. App. 5th 86

A personal representative may be removed for excessive delay in administering an estate and making offers to settle the estate in bad faith with beneficiaries.

BACKGROUND:

Roscoe Sapp, Sr. died on March 20, 1994. He was survived by seven children. The probate court issued letters of special administration to his sister, Vivian over objection from Edith Rogers, Roscoe's granddaughter. His will left improved and unimproved property to his children to share and share alike. Grandchildren would take equally from their parents.

Rogers continued to attempt to remove Macon. She succeeded in 1999 and the court appointed her, Roscoe Sr.'s son Roscoe Jr., and another granddaughter, Jennifer Sapp as co-administrators. The court later removed Jennifer as an administrator in 2000.

Then, the co-administrators petitioned for instructions regarding estate distribution. They contended that the decedent's will was ambiguous. Specifically, they sought clarification whether real property should be sold or whether some properties should be kept for the benefit of heirs in capable of caring for themselves. On August 30, 2001, the court instructed the co-administrators to sell property and ordered the co-administrators attorney to submit a formal order. The attorney never submitted a formal order and the court never signed one.

Roscoe, Jr. died in 2003 and, in 2005, Rogers became sole administrator. In the 14 years following the 2001 order, the court approved the sale of four properties, but Roger made no other progress in distributing the estate. Two grandchildren filed petitions to remove Rogers. Primarily, they argued removal was appropriate because of substantial delays in administration, which they believed were intentional. At trial, they offered evidence of the delay, and they also noted that Rogers offered beneficiaries $10,000 in lieu of their inheritance. Rogers offered evidence of her attempt to sell the properties. The trial court granted the petitions. It noted that 15 years elapsed from the order directing them to sell property and that she had a conflict in acting as administrator because she has consistently taken the position that some beneficiaries should not take under the estate. The court concluded she was incapable of executing her duties of administrator properly.

KEY ISSUE:

Whether the trial court abused its discretion in removing Rogers as

administrator of the estate.

RESULT:

The Court of Appeal affirmed, and held that removal was proper because she was not qualified and mismanaged the estate. The Court of Appeal explained that while inappropriate that probate court under Probate Code section 8502, Rogers was incapable of properly executing the duties of administrator, she was "otherwise not qualified" under the same statute. The Court of Appeal noted that incapable meant physical or mental incapacity, and neither applied to Rogers. But, given her inability to sell the properties at issue in 15 years, her actions taken in bad faith to buy out heirs, and her inability to remain impartial, she was otherwise not qualified to administer the estate. The Court of Appeal further agreed that Rogers mismanaged the estate. Predominantly, it pointed out that a fifteen year delay in selling the property constituted waste. It argued that while prior cases had required a finding of moral wrong, the Court of Appeal adopted a less stringent definition of mismanagement.

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

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

BACKGROUND:

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

The beneficiaries sought to obtain their trust distributions through a petition for surcharge and to account, which the co-trustees opposed, arguing that the beneficiaries' petition was barred by the statute of limitations under Probate Code section 16061.8.[1]

The trial court concluded that the trust was not a continuing discretionary spendthrift trust. The trial court further concluded that the beneficiaries' efforts seeking such distribution via a petition for surcharge and to account were not barred by the statute of limitations in Probate Code section 16061.8 because such efforts did not constitute an action "contest[ing]" the trust. The trial court, however, rejected the

[1] Probate Code section 16061.8 provides that, "[n]o person upon whom the notification by the trustee is served pursuant to this chapter, whether the notice is served on him or her within or after the time period set forth in subdivision (f) of Section 16061.7, may bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the date on which a copy of the terms of the trust is delivered pursuant to Section 1215 to him or her during that 120-day period, whichever is later."

beneficiaries' contention that the co-trustees engaged in the unauthorized practice of the law. The co-trustees appealed the trial court's findings relative to their petition for instructions and the beneficiaries' petition for surcharge and to account.

KEY ISSUE:

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

RESULT:

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

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

Income Tax

N.C. Dep't of Revenue v. Kimberly Rice Kaestner 1992 Family Trust 139 S. Ct. 2213 (2019)

A North Carolina law authorizing the imposition of state tax on trust income solely on the basis of the in-state residence of one of the trust's beneficiaries violated the Due Process Clause of the United States Constitution.

BACKGROUND:

A settlor – a New York resident – established a trust for the benefit of his children which was governed by New York law and named, as trustee, a New Yorker who had absolute discretion to make distributions to the trust's beneficiaries, such that no beneficiary could count on receiving income within a taxable year. At the time the trust was settled, none of its beneficiaries were residents of North Carolina, until the settlor's daughter moved there with her three children in 2005, where she lived until 2008, the relevant taxable time period.

At no point during her residence in North Carolina, did the settlor's daughter ever receive any income from the trust. Nevertheless, the North Carolina Department of Revenue assessed a tax on the full proceeds that the trust accumulated for tax years 2005 through 2008 and required the trustee to pay it, which the trustee did under protest. Thereafter, the trustee sued in state court claiming that the tax violated the Due Process Clause of the U.S. Constitution. The trial court decided that the daughter's residence in North Carolina was too tenuous a link between the state and the trust to support the tax and found that it violated the Due Process Clause. The North Carolina Court of Appeals affirmed, as did the North Carolina Supreme Court. The United States Supreme Court granted cert.

KEY ISSUE:

Whether the settlor's daughter and her three children had the requisite relationship with the trust property to justify the state's tax such that it passed muster under the Due Process Clause of the U.S. Constitution.

RESULT:

The U.S. Supreme Court affirmed the decision of the North Carolina Supreme Court that the state's tax on the trust violated the Due Process Clause. The Court reasoned that, under Due Process analysis for tax purposes, when a state seeks to base its tax on the in-state residence of a trust beneficiary, the Due Process Clause demands a pragmatic inquiry into what exactly the beneficiary controls or possesses and how that interest relates to the object of the State's tax. And, the Due Process Clause demands attention to the particular relationship between the

resident and the trust assets that the state seeks to tax. Moreover, the Court explained that, when a tax is premised on the in-state residence of a beneficiary, the U. S. Constitution requires that the resident have some degree of possession, control, or enjoyment of the trust property or a right to receive that property before the State can tax the asset. This was not the case here since the settlor's daughter had no right to demand any trust distributions, and, in fact, did not receive any trust distributions while she was a North Carolina resident. Consequently, the state's tax on the trust, based solely on the settlor's daughter's status as a resident, violated the Due Process Clause.

Joint Accounts

Placencia v. Strazicich (2020) 42 Cal. App. 5th 730

When a joint account includes a right of survivorship, funds from the joint account may pass into the decedent's estate when evidence of the decedent's intent to diverge from the instruction in the joint account is clear and convincing.

BACKGROUND:

Ralph Placencia left a joint bank account with an express right of survivorship to his one of his daughters, Lisa Strazicich. However, his will stated the contrary and he made clear he wanted the joint account to benefit all three of his daughters.

After his death, Lisa refused to relinquish the funds in the joint account. Stephanie, another daughter who was co-trustee, filed a petition to determine the rights to the joint account. Lisa did the same. The probate court determined that Ralph's intent should prevail and ordered Lisa to account for the funds from the joint account in the trust.

KEY ISSUE:

Whether the decedent's clear intent to pass the funds from a joint account to a different beneficiaries supersedes the express right of survivorship.

RESULT:

The Court of Appeal affirmed, holding that decedent's intent superseded the express rights of survivorship when the joint account was not altered by any of the methods listed in Probate Code, § 5303 and the evidence of intent was clear and convincing. The Court harmonized the tension by stating the financial institution should award funds to the surviving party—Lisa—according to the terms of the account. However, where there is clear and convincing evidence of intent in the form of Ralph's will, the funds are rightly part of the decedent's estate. As such, the funds are held constructive trust in favor of decedent's heirs as he intended and should be accounted in his estate.

Partnerships

Han v. Hallberg (2019) 35 Cal.App.5th 621

Under California's Uniform Partnership Act, a dental partnership between four dentists, despite being governed by an agreement which triggered certain buyout provisions upon the death of a partner, did not trigger such provisions upon the death of a former partner who had transferred his interest in the partnership to himself, as trustee of his trust. And, the result would have been the same had that partner transferred his interest to the trust itself, rather than the trustee.

BACKGROUND:

A group of dentists set up a general partnership for the purpose of owning and operating a dental office. Years later, the partners amended the partnership agreement so that, upon the death of a partner, their estate could retain the interest of the deceased partner and to continue operation of the partnership by notifying the surviving partners in writing within 90 days from the date of death. And, in the event that the estate failed to exercise this option, the surviving partners could opt to purchase the interest of the deceased partner by notifying the estate, within 60 additional days.

Thereafter, one of the partners, Dr. H, with the consent of the other partners, transferred his interest in the partnership to himself, as trustee of the trust. Years later, Dr. H. named his son co-trustee and, thereafter resigned so that his son was the sole trustee of the trust. So, at the time of Dr. H's death, his son was the sole trustee of Dr. H's trust. After the 90 days from Dr. H's death, the surviving partners sent a notice to Dr. H's son as trustee expressing their intent to exercise their right to purchase Dr. H's interest. Dr. H's son's lawyer responded by calling the surviving partners' attention to the amendment that transferred Dr. H's interest to the trust and explained that such exercise was invalid because the trust was the rightful owner of Dr. H's interest, despite his death. The surviving partners brought an action for, among other things, breach of the partnership agreement against Dr. H's son and sought the appointment of a probate referee to evaluate the parties' respective interests. The trial court held that, since the trust was not a separate legal entity, the trust could not retain an interest in the partnership following Dr. H's death. Dr. H's son appealed.

KEY ISSUE:

Whether, in view of the California Partnership Act which defines "Person" to include "trusts", the death of Dr. H – the former trustee of the his trust to whom Dr. H as an individual transferred his interest in the partnership – triggered the partnership's buyout provisions.

RESULT:

The Court of Appeal reversed the decision of the trial court. In so doing, the Court explained that Corp. Code, § 16601, states that a partner is dissociated from a partnership in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, by distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee. The surviving partners, however, argued that, since a trust is not a legal entity under California law, it is the trustee that is really the partner, and, since Dr. H, the former trustee to whom the interest in the partnership was initially transferred, died, that should've triggered the buyout provisions. The Court, however, rejected this assertion explaining that, the fact that a trust is a relationship and not an entity separate from its trustees does not mean that a trust cannot act — as always, through its trustee — as a partner under general partnership law. And, California's Uniform Partnership Act expressly provides that a trust may associate in a partnership. Accordingly, whether Dr. H transferred his interest in the partnership to himself as trustee of his trust, or whether he transferred it to the trust itself under the partnership agreement made no difference.

Notice/Due Process

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

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

BACKGROUND:

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

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

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

KEY ISSUE:

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

RESULT:

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

Powers of Appointment

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

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

BACKGROUND:

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

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

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

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

KEY ISSUE:

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

RESULT:

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

Creditors' Claims

Estate of Holdaway (2019) 40 Cal.App.5th 1049

The timely filing of a creditor's claim under Code of Civil Procedure section 366.2 tolled the one-year statute of limitations thereunder for nearly three (3) years until the personal representative rejected said claim. And, the creditor's complaint to challenge the rejection of her claim, which was brought within 90 days of the rejection, was timely. Moreover, this result was not changed by the fact that the trial court – two (2) years earlier – dismissed a probate petition brought by the creditor.

BACKGROUND:

The decedent died on June 13, 2013, and, on June 11, 2014, a purported creditor filed a petition for probate and a creditor's claim seeking payment on certain loans and services purportedly rendered to the decedent. After much delay by the creditor, including receiving several continuances, the trial court, May 15, 2015, dismissed the creditor's probate petition without prejudice after the creditor failed to respond to the trial court's OSC why the case should not be dismissed for failure to prosecute. Thereafter, the decedent's son was appointed personal representative in October 2016, but did not formally reject the creditor's claim until March 10, 2017. The creditor filed a complaint challenging this rejection on May 19, 2017. The personal representative demurred on the basis that the creditor's complaint was time barred under CCP § 366.2, but did not at any point contend that the creditor had not satisfied the notice requirement with respect to her creditor's claim. The trial court sustained the personal representative's demurrer without leave to amend.

KEY ISSUE:

Whether the trial court's dismissal of the creditor's probate petition to be appointed as a representative of the decedent's estate terminated the tolling of the statute of limitations triggered by her creditor's claim, thereby rendering her complaint challenging the personal representative's rejection of such claim untimely.

RESULT:

The Court of Appeal reversed the trial court's decision to sustain the demurrer. The personal representative acknowledged that the filing of the creditor's claim was timely, and that the creditor had 90 days from the action taken thereon to bring an action against the estate under Probate Code section 9353.
And, the personal representative took the position that the court's dismissal of the creditor's probate petition constituted a "rejection" of her claim pursuant to Probate Code section 9352, but cited no authority to this effect. The Court of Appeal

rejected this position, explaining that both the statutory structure and authority indicate that the power to reject a claim under Probate Code section 9352 is that of the personal representative appointed by the court, not the court itself. And, the Court further explained that, under the current statutory scheme, the filing of a claim tolls the underlying statute of limitations until the creditor's claim has been rejected, and after rejection, the creditor has three months within which to bring an action, regardless of the time otherwise remaining on the statute of limitations which, in this case, was only two (2) days.

Medi-Cal

Gonzalez v. City National Bank (2020) 36 Cal. App. 5th 734

The Department of Health Care Services may seek reimbursement for medical services from a special needs trust with a payback provision even when the decedent was under age 55.

BACKGROUND:

Brenda Gonzalez suffered complications at birth that left her severely disabled. A medical malpractice suit yielded at $2.4 million settlement. The proceeds were put into a special needs trust pursuant to Probate Code section 3604 and 3605. The special needs trust allowed Brenda to preserve eligibility for Medi-Cal, but contained a payback provision.

Brenda died in April 2016 at the age of 21. $1.6 million remained in the trust. The Department of Health Care Services filed a creditor's claim seeking reimbursement for medical care for Brenda in the amount of $3,972,501.21 citing Probate Code sections 3604 and 3605. These code provisions, the Department alleged, required the remaining trust estate to be paid to the Department.

Brenda's parents filed a petition seeking an order directing the trustee to distribute the trust's remainder to them. Her parents argued that Welfare and Institutions Code former section 14009.5 (b)(2)(C) bars the Department from recovery of reimbursement of Medi-Cal because Brenda was under 55 years old. They also argued that the amount sought by the Department erroneously included expenses for special education services pursuant the Individuals with Disabilities Act and regional center services pursuant to the Lanterman Development Disabilities Act. The probate court denied the petition and order the trustee to pay the entire amount requested by the Department.

KEY ISSUE:

Whether Welfare and Institutions Code former section 14009.5 governs the Department's right to reimbursement such that Medi-Cal payments to a decedent who was under the age of 55 need not be paid out the decedent's estate.

RESULT:

The Court of Appeal affirmed the trial court's ruling and held that the Department may seek reimbursement because federal law required it, section 14009.5 notwithstanding. It explained that federal law established a general rule trust assets would be counted for the purposes of determining Medicaid exemptions under the Social Security Act in §1396p(d)(4)(A), but allowed exemptions for special

needs trusts provided that the State may be reimbursed after their death for medical assistance paid. The Court of Appeal then noted federal law requires that state medical assistance programs comply with §1396p(d)(4)(A). Therefore, the Court noted it was equally true that special needs trusts in California must contain provisions which allow the State to be reimbursed upon the death of individual. It then pointed out that Probate Code section 3604 and 3605, which applies to special needs trusts of minors, provides that trust property in the special needs trust belongs to the Department "to the extent authorized by law as if the trust property is owned by the beneficiary." The Court of Appeal then pointed out exception to this rule in Welfare and Institutions Code former section 14009.5, which generally prohibited the Department from seeking reimbursement for Medi-Cal expenditures to those under age 55. In harmonizing these statutes, the Court of Appeal found that
§1396p(d)(4)(A) special needs trusts necessarily "may be considered in determining eligibility for Medicaid if the state will not receive all amounts up to an amount equal to the total medical assistance paid." As such, it stated that this section mandates that the Department seek recovery paid for by Medi-Cal on behalf of the beneficiary of a special needs trust.

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

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

BACKGROUND

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

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

KEY ISSUE

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

RESULT

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

Exercise of a Specific Power of Appointment

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

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

BACKGROUND

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

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

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

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

KEY ISSUE

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

RESULT

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

Personal Jurisdiction

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

BACKGROUND

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

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

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

KEY ISSUE

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

RESULT

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

Methods of Trust Revocation

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

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

BACKGROUND

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

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

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

KEY ISSUE

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

RESULT

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

Tortious Interference with Expected Inheritance

Gomez v. Smith (2020) 2020 WL 5640229

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

BACKGROUND

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

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

KEY ISSUE

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

RESULT

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

Standard of Appellate Review

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

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

BACKGROUND

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

KEY ISSUE

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

RESULT

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