

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S209376

Conservatorship of the Estate of IDA McQUEEN:

FESSHA TAYE, as Conservator of the Estate of Ida McQueen,
Plaintiff and Respondent,

v

CAROL VERES REED, Defendant and Appellant.

SUPREME COURT
FILED

AUG - 9 2013

Frank A. McGuire Clerk

Deputy

After a Decision by the Court of Appeal,
First Appellate District, Division Four
Case No. A134337

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE,
MEMORANDUM OF POINTS AND AUTHORITIES,
AND SUPPORTING DECLARATION**

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MOTION FOR JUDICIAL NOTICE

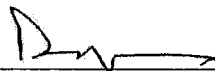
To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of California:

Pursuant to California Rules of Court, rule 8.252, and California Evidence Code sections 452 and 459, Respondent FESSHA TAYE, Conservator of the Estate of IDA McQUEEN, moves this Court to take judicial notice for purposes of its review on the merits in this case of: California Bill Analysis, A.B. 2611 Sen., 6/22/2004, a true and correct copy of which is attached as Exhibit A to the Supporting Declaration of Daniel D. Murphy.

This motion is based on the attached Memorandum of Points and Authorities, the Supporting Declaration and this Court's files and records in this case.

Dated: August 8, 2013

Respectfully submitted,



DANIEL D. MURPHY
AUDRA IBARRA
Counsel for Plaintiff and Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Evidence Code section 459, a reviewing court may take judicial notice of any matter specified in section 452. (Evid. Code, § 459, subd. (a).) Under California Rules of Court, rule 8.252, a party requesting judicial notice must file a motion which states: (1) why the matter to be noticed is relevant to the appeal; (2) whether the matter was presented to the trial court; (3) if the matter was not presented, why the matter is subject to judicial notice; and (4) whether it relates to proceedings occurring after the order being appealed. (Cal. Rules of Court, rule 8.252(a)(2).)

Respondent request that this Court take judicial notice of: California Bill Analysis, A.B. 2611 Sen., 6/22/2004. (“CBA.”) The CBA is relevant to this Court’s review of this case on the merits. One of the issues in this case is whether respondent is entitled to attorney fees under the financial elder abuse fee shifting statute, section 15657.5 of the Welfare Institutions Code. (See Opening Brief on the Merits, section I.) The CBA is the legislative history of, and includes legislative intent regarding, that section.

The CBA was not presented to the trial court or court of appeal. However, judicial notice may be taken of documents that constitute cognizable legislative history. (Evid. Code, § 452, subd. (c); *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26; see also, *Elsner v. Uveges* (2004) 34 Cal.4th 915, 921, fn. 10.) Moreover, the “Evidence Code clearly contemplates that, at least in some situations,

a reviewing court will grant judicial notice even when the information was not presented to the trial court.” (*People v. Hardy* (1992) 2 Cal.4th 86, 145.) Judicial notice is appropriate in this case, because this Court reviews *de novo* the issues of statutory construction presented. (See *Los Angeles County Department of Children and Family Services v. Superior Court* (2008) 162 Cal. App.4th 1048, 1414.)

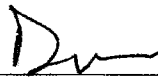
The CBA does not relate to proceedings occurring after the order being appealed.

CONCLUSION

Respondent requests that this Court grant judicial notice of: California Bill Analysis, A.B. 2611 Sen., 6/22/2004.

Dated: August 8, 2013

Respectfully submitted,



DANIEL D. MURPHY
AUDRA IBARRA
Counsel for Plaintiff and Respondent

SUPPORTING DECLARATION

1. I, Daniel D. Murphy, am an attorney licensed to practice law before all state courts in the State of California, and the allegations contained herein are of my own personal knowledge.
2. I acted as trial counsel in this matter, acted as appellate counsel in this matter on two occasions, and now represent my client, FESSHA TAYE, in this proceeding with co-counsel Audra Ibarra.
3. The document attached hereto as Exhibit A is a true and correct copy of : California Bill Analysis, A.B. 2611 Sen., 6/22/2004. This document is in the legislative history materials for section 15657.5 of the Welfare and Institutions Code on WestlawNext.

Executed this 8th day of August, 2013 under the penalty of perjury under the laws of the State of California at San Francisco, California.



DANIEL D. MURPHY

CERTIFICATE OF SERVICE

I declare that I am over the age of 18, not a party to this action, and my business address is 819 Eddy Street San Francisco, CA 94109. On the date shown below, I served RESPONDENT'S MOTION FOR JUDICIAL NOTICE, MEMORANDUM OF POINTS AND AUTHORITIES, AND SUPPORTING DECLARATION on the following parties by:

X Placing a true copy, enclosed in a sealed envelope with postage fully prepaid, in the United States mail, in San Francisco, California, addressed to:

First District Court of Appeal
350 McAllister Street
San Francisco, CA 94102

The Honorable Judge Jo-Lynne Q. Lee
Alameda County Superior Court
U.S. Post Office Building
201 13th Street
Oakland, CA 94612

Brooke Veres Reed
Nichols, Catterton, Downing & Reed
3433 Golden Gate Way, Suite C
Lafayette, CA

Fessha Taye
2625 Alcatraz Ave
Berkeley, CA 94705-2702

I declare under penalty of perjury the foregoing is true and correct. Executed this 9th day of August 2013, in San Francisco, California.



DANIEL D. MURPHY

EXHIBIT A

Welfare and Institutions Code Section 15657 was created to provide enhanced remedies to ensure adequate representation of elders in cases of elder abuse. A particular problem arises with elder financial abuse cases. Even where the perpetrators of elder financial abuse are criminally prosecuted, oftentimes, they no longer have control over their assets. The assets have been consumed, or they have been retained by or passed on to third parties, who then profit from the abuse. These third parties have little incentive to return the disputed assets or settle these cases, given the heightened burden of proof necessary to prove recklessness, oppression, fraud or malice under the current law.

Elder financial abuse cases already tend to be drawn out and complicated. Protracted disputes with third parties can entirely deplete an elder's remaining or disputed assets, or may discourage such cases from ever being prosecuted.

California Bill Analysis, A.B. 2611 Sen., 6/22/2004, California Bill Analysis, A.B. 2611 Sen., 6/22/2004