IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOAN MAURI BAREFOOT,
Petitioner and Appellant,

v.

JANA SUSAN JENNINGS et al.,
Defendants and Respondents.

Supreme Court
No. S251574

Court of Appeal
No. F076395

Superior Court
No. PR11414

APPEAL FROM THE SUPERIOR COURT OF TUOLUMNE COUNTY

Honorable Kate Powell Segerstrom, Judge

OPENING BRIEF ON THE MERITS

After the Published Decision of the Court of Appeal, Fifth Appellate District

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OPENING BRIEF ON THE MERITS

After the Published Decision of the Court of Appeal, Fifth Appellate District Affirming the Order Dismissing Appellants Petition for Lack of Standing

ISSUE PRESENTED

1. Whether a former beneficiary of a trust lacks standing to challenge the validity of amendments to that trust that resulted in disinheritance?

INTRODUCTION

The Fifth District Court of Appeal's (hereinafter referred to as "Fifth DCA") opinion stands for the proposition that beneficiaries impacted by acts against the trust settlor such as fraud or undue influence must prosecute those claims in civil court, not probate court. Joan Mauri Barefoot

(hereinafter referred to as "Appellant") is baffled as to why the trial court and the Fifth DCA didn't simply transfer Appellant's trust contest to a different court if they thought a different court was better suited to hear Appellant's claims. Under Probate Code 16061.7 beneficiaries only have 120 days after receiving the notification from the trustee to bring a trust contest. The required 16061.7 notification was sent to Appellant on October 24, 2016. (Motion for Judicial Notice, hereinafter referred to as "MJN" at 0002-0003). Therefore, Appellant may be barred from bringing a separate civil action to contest the trust amendments that disinherited her if the civil court finds that the statute of limitations hasn't been tolled.

Under the Fifth DCA's decision disinherited beneficiaries like Appellant, who were the intended victims of fraud and undue influence perpetrated upon the trust settlor, no longer have recourse under the Probate Code to invalidate an ill-gotten trust or changes to that trust. The Fifth DCA's decision is fundamentally incorrect for public policy reasons because it creates a perverse incentive to exploit susceptible trust settlors by creating an administrative quagmire for beneficiaries who are the intended victims of elder abuse and fraud. For example, pursuant to the Fifth DCA's decision all equitable remedies available under the Probate Code are offered to beneficiaries like Appellant's brother Dana Anthony Berry, Sr. whose interests are merely diminished, however, bars fully disinherited

beneficiaries like Appellant from those same remedies. A copy of Appellant's brother Dana Anthony Berry, Sr.'s trust contest that is still pending before the Superior Court is attached to Appellant's MJN. (MJN at 0005-0058). Using the Fifth DCA's approach, disinherited beneficiaries are only allowed back into probate court after they successfully invalidate the ill-gotten trust in civil court.

Most trust contests are resolved by negotiated settlements, therefore, the issue of standing by a disinherited trust beneficiary raised in this case hasn't gone up on appeal before. Before this case, petitions under Probate Code 17200 to contest the validity of trusts on behalf of disinherited beneficiaries were commonly brought under the assumption that the standard applicable to will contests applies equally to trusts. It should be noted that nowhere in Appellant's pleadings was it alleged that Probate Code 17200 was Appellant's only basis for standing. Nevertheless, the generally accepted practice is that the probate court is the proper venue for parties whose interests are affected by the challenged trust instrument. However, there is no express statutory authority mandating so. For comparison, persons disinherited by a will have express statutory standing to contest the ill-gotten will in probate court under Probate Code 48.

The Fifth DCA's decision created a two-tiered judicial system whereby beneficiaries with diminished interests like Appellant's brother

may bring their claims in probate court pursuant to Probate Code 17200, however, disinherited beneficiaries like Appellant must seek their remedy in civil court. The Fifth DCA advised, "a complaint alleging the same causes of action would not be barred by the beneficiary limitation of section 17200." (Opn at p. 5 ftn 2). To follow the Fifth DCA's approach Appellant will first have to litigate the issue of whether the document is valid or not in civil court. However, the trial on Appellant's brother's trust contest has been continued pending the outcome of this appeal. (MJN at 0074-0077). Therefore, assuming Appellant is permitted to file a civil action to contest the validity of the trust amendments that disinherited her in civil court, there may be two different trials regarding the validity of the same documents and possibly two different orders reaching opposite conclusions regarding the validity of the exact same documents. This is a waste of judicial resources and inefficient because the trustee will be forced to defend identical lawsuits in two separate divisions of the same court. Additionally, this scenario would raise novel questions regarding res judicata that would likely be subject to further appeal. It's common practice for civil divisions to transfer trust contests to the probate division because probate courts have exclusive jurisdiction over the internal affairs of trusts and it makes sense to set all trust contests for trial at the same time. Furthermore, civil departments tend to transfer trust contests to probate

departments because probate departments are generally better equipped to handle complex trust and estate matters. For example, probate departments commonly have staff that specialize in probate matters such as probate research attorneys, probate examiners and probate technicians or clerks exclusively assigned to the probate department who assist the judge with analyzing complex trust disputes. The Fifth DCA's opinion has produced absurd results because the opinion bars civil courts from transferring trust contests filed in civil courts to be consolidated with other trust contests in probate court. The Superior Court will have to decide whether the civil court or the probate court will try the matter first. This Court should find that disinherited beneficiaries have standing to bring trust contests in probate court so that all trust contests can be heard by the same court at the same time.

Another problem with the Fifth DCA's opinion is after the ill-gotten trust is invalidated in civil court the victorious contestant who has now conferred standing as a beneficiary under Probate Code 17200 must return to probate court to litigate remaining companion issues against the trustee. For example, Appellant petitioned to declare that any recipients of distributions from the trust hold those assets and any income therefrom in constructive trust for the persons entitled to distribution of the trust property, for removal of the currently acting trustee, and for an order that

the currently acting trustee provide a complete accounting of the trust since the settlor's death. (Clerk's Transcript, hereinafter "CT" at 15). These companion issues are important to this appeal because the probate court has exclusive jurisdiction over the internal affairs of trusts which includes the removal of a trustee and accounting issues. In this appeal the removal of the trustee and accounting issues are interwoven with Appellant's claims that the currently acting trustee unduly influenced the settlor to effectuate the changes to the trust. It makes sense for all of Appellant's claims to be heard by the probate court at the same time. Additional items of concern are that unless this Court overturns the Fifth DCA's decision, the currently acting trustee will continue acting as trustee without any court supervision until after Appellant returns to probate court after her contest is successful in civil court and by that time it could be too late. As discussed below, civil courts don't function on an expedited timeline like probate court, therefore, it could be years before the trustee is subject to any court supervision.

As opposed to transferring Appellant's petition to a court the Fifth DCA deemed proper, the Fifth DCA wrote an opinion of first impression that improperly treats trust contests like standard civil lawsuits, bars disinherited beneficiaries from probate court, allows trustees to serve without court supervision pending trust contests by disinherited beneficiaries, departs from voluminous well-reasoned case law analogizing

wills to trusts, improperly forces disinherited beneficiaries to prove ultimate factual issues regarding the validity of the document at the pleading stage, and creates a dangerous quagmire for disinherited beneficiaries who wish to contest gifts to presumptively disqualified persons such as drafters of instruments, fiduciaries and care custodians. The Fifth DCA's opinion has far reaching unintended consequences which will be further discussed below. For example, although forgery is not at issue in this case, of additional concern is that the Fifth DCA's opinion fails to carve out any exceptions for beneficiaries disinherited by allegedly forged amendments.

This Court should resolve all issues brought before it by confirming that probate courts have jurisdiction to hear all trust contests and that disinherited beneficiaries have standing under Probate Code 17200, other statutes, common law and common sense to bring trust contests in probate court similar to how heirs disinherited by a will have standing to contest the will that disinherited them. Those defending ill-gotten amendments shouldn't be allowed to twist Probate Code 17200 to shield the amendments from judicial scrutiny and dismiss legitimate contests on an overly technical and out of context analysis of one code section.

LEGAL AND FACTUAL BACKGROUND

A. Factual Background

Joan Lee Maynord (Joan) died on August 20, 2016 at the age of 83. (CT 6-7). Joan had five surviving children including Appellant, Respondents Jana Susan Jennings (Sue) and Shana Lee Wren (Shana), and the other petitioner in this case, Dana Anthony Berry, Sr. (Tony). (CT-124). Joan's fifth surviving child, Tommy Joe Glover, has not appeared in this litigation. Tony's case remains pending at the trial court level and his trust contest has been continued pending the outcome of this appeal. (MJN-0074-0077).

In 1986 Joan and her husband Robert Maynord (Robert) established The Maynord 1986 Family Trust (the Trust). (CT-7). They amended it once in 1992. (CT-125). Joan became the sole trustee when Robert died in 1993. (CT-7). After Robert's death Joan executed an additional 23 purported amendments and/ or restatements of the Trust. (CT-125). Joan purportedly executed the 17th through 24th amendments over a period of less than three years. (CT 6-16, 122-36). Pursuant to at least the 16th amended version Appellant stood to receive a substantial inheritance as a beneficiary of the Trust. The purported 24th amended version of the Trust excludes Appellant as a beneficiary. (CT 20-21).

During the time preceding January 2013 Shana and Sue had assumed control of Joan's daily healthcare and finances. (CT-126). However, Shana and Sue were neglecting their mother's well-being. (CT-126). As a

result, Appellant moved back to California to care for Joan at Joan's request. (CT-127). In fact, on March 13, 2013 Joan designated Appellant as the executor of Joan's estate, successor trustee of Joan's Trust, personal representative for Joan's health care disclosures and agent for Joan's finances. (CT-127).

Appellant lovingly cared for her mother until Shana and Sue succeeded in poisoning the well against Appellant by means of fraud and undue influence to get back in control of Joan's healthcare and finances. (CT-127). Shana and Sue intentionally alienated Appellant from Joan and bullied Appellant to leave Joan's home. (CT-127). Shana and Sue conspired to falsely convince Joan that Appellant was responsible for initiating litigation against Joan regarding real property that Joan owned in Texas and for having Joan's driving privileges revoked. (CT-127). Shana and Sue also fed Joan's paranoia by falsely convincing Joan that Appellant was mentally ill and trying to harm the family. (CT-129).

Shana and Sue had control of Joan's healthcare and finances during the next three years leading up to Joan's death when Joan executed the 17th through 24th amendments. (CT-126). During that time period Joan relied on Shana and Sue for continuous assistance and management of Joan's healthcare and finances. (CT-127).

During the time that Joan executed the 17th through 24th amendments Joan suffered from the following conditions. Joan suffered from approximately five bouts of cancer that affected her major organs. (CT-126). She also suffered from cirrhosis which often caused her confusion, personality changes and fatigue due to her liver's inability to remove toxic substances from her blood. (CT-126). Joan also suffered from encephalopathy which affected her brain and caused her severe cognitive impairment. (CT-126, 129). Especially during the last three years of her life Joan was known to complain of difficulty thinking, concentrating, analyzing and remembering. (CT-126, 129-30). She even forgot how to start a motorcycle despite having driven motorcycles for years. (CT-126). During this time period Shana and Sue intentionally alienated Joan from Appellant and other family members. (CT-130-31). It was during this time that Shana and Sue were ultimately successful in unduly influencing Joan to increase their inheritances and disinherit Appellant. (CT-130).

B. The Underlying Pleadings

Appellant's petition challenged the validity of the 17th through 24th amendments to the Trust on three grounds. (CT 6-12, 124-33). In the first, Appellant alleged that Maynord was "not of sound and disposing mind" and thus lacked the "requisite mental capacity to amend the Trust." (CT-8,

128). In the second, Appellant alleged undue influence on behalf of Shana who received a large share from the Trust. (CT-8). In the third appellant alleged fraud on behalf of Shana, relying on similar facts as in the second ground. (CT-11). Appellant included a lengthy factual recitation of the facts she alleged led to her disinheritance. (CT 6-12, 122-36). Appellant additionally petitioned for removal of the trustee, imposition of a constructive trust on assets and proceeds of the Trust and for an accounting. (CT-13, 15).

Appellant alleged that she was a person interested in both the devolution of her mother's estate and the proper administration of the Trust because Appellant is both an heir at law, former beneficiary and successor trustee of the Trust before the purported amendments. (CT-7).

C. Motion to Dismiss

Respondents filed an answer to appellants petition and a motion to dismiss Appellants petition pursuant to Probate Code 17200 and 17202. (*Supplemental* Clerk's Transcript, hereinafter "SCT" at 4-196 and CT 59-97). Respondent's motion to dismiss argued that Appellant lacked standing under Probate Code 17200 because she was neither a beneficiary nor a trustee of the trust as constituted under the 24th amendment. (CT 59-60). Appellant opposed the motion and argued that she was a beneficiary under the 16th amendment and alleged that the later versions of the trust were

invalid. (CT 98-100). The trial court dismissed Appellant's petition for lack of standing. (CT 112-1123). Appellant brought a motion for reconsideration of the ruling dismissing her petition and attached a proposed amended petition including additional facts relevant to her claim that the later amendments were invalid and additional grounds for setting aside the amendments. (CT 120-84). Appellant attached a proposed amended petition as an exhibit to her motion for reconsideration. (CT-122-76). The proposed amended petition clarified the basis for Appellants standing, including additional statutory authority, and sought to add an additional cause of action for intentional interference with an expected inheritance. (CT 122-36). Respondents filed an opposition to Appellant's motion for reconsideration. (CT 185-93). Appellant filed a reply to the opposition to her motion for reconsideration. (CT194-218). The trial court denied Appellant's motion for reconsideration and Appellant filed a timely appeal. (CT 220-21, 223)

D. The Court of Appeal's Decision

The Fifth DCA affirmed the trial court's order dismissing Appellant's petition for lack of standing, holding that the law is clear that only a trustee or currently named beneficiary have standing to challenge the terms of the trust in probate court. (Opn at p. 5). The Fifth DCA held that a former beneficiary of a trust who no longer has any interest in the trust

lacks standing under Probate Code 17200 to challenge the validity of the amendments that disinherited her. (Opn at p. 8)

ARGUMENT

I. NO STATUTE OR POLICY LIMITS THE PROBATE COURT'S ABILITY TO HEAR TRUST CONTESTS FILED BY DISINHERITED BENEFICIARIES.

The Fifth DCA erroneously held that disinherited beneficiaries of a trust lack standing to bring trust contests in probate court. The Fifth DCA's conclusion rested on that court's erroneous pronouncement – the first of its kind by a California appellate court – that some trust contests must be filed in civil court and other trust contests may be filed in probate court. The Fifth DCA's holding departed from the well-established practice that disinherited beneficiaries are permitted to file trust contests in probate court. Furthermore, the Fifth DCA's opinion is contrary to public policy because it creates judicial waste by forcing parties with nearly identical claims to file in two separate courts and risks multiple courts reaching opposite conclusions regarding the validity of the exact same trust instrument. The Fifth DCA misses the boat because their analysis treats trust contests like standard civil lawsuits. Trust contests are not standard civil lawsuits, trust contests are specialized probate proceedings designed to determine inheritance rights. Typically probate courts don't rule on trust contests until notice has been perfected on all potential parties so that the

decision is binding on all the world with regard to the validity of the trust. This practice stands to reason because absent a protective statute, a trustee is ordinarily absolutely liable for mis delivery of the trust assets, even if the trustee reasonably believed that distribution was proper. (Rest.2d, Trusts (Restatement) § 226). If two different courts make two different decisions regarding which instrument is valid the trustee won't know who to distribute the assets to and the trustee will be absolutely liable for mis delivery of the trust assets. Therefore, the Fifth DCA's opinion violates public policy because trustees will be restrained from making distributions out of concern regarding liability pertaining to distributing assets pursuant to the wrong court order. This will cause needless confusion, appeals and litigation.

A. PROBATE COURTS HAVE GENERAL JURISDICTION TO DIPSOSE OF ANY MATTERS BROUGHT BEFORE IT IN ADDITION TO EXCLUSIVE JURISDICTION OVER THE INTERNAL AFFAIRS OF TRUSTS.

In proceedings commenced pursuant to Division 9 of the probate code concerning trust law the probate court is a court of general jurisdiction and has all the powers of the superior court. (Prob. Code § 17001). Probate Code section 17004 states that the probate court may exercise jurisdiction in proceedings under Division 9 of the Probate Code concerning trust law on any basis permitted by section 410.10 of the Code of Civil Procedure. Code of Civil Procedure section 410.10 states that a

court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. In addition to having general jurisdiction, probate courts also have exclusive jurisdiction to hear cases regarding the internal affairs of trusts. (*Saks* v. *Damon Raike & Co* (1992) 7.Cal.App.4th 419, 429). The Law Revision Commission Comment to Probate Code 17000(b) states, "it is intended that the department of the superior court that customarily deals with probate matters will exercise the exclusive jurisdiction relating to internal trust affairs provided by subdivision (a)." (Cal. Law Revision Com., 54A West's Ann. Prob. Code (1991 ed). 17000, p. 182). Therefore, probate courts have more jurisdiction to dispose of the matters brought before it than regular civil courts because probate courts have exclusive jurisdiction over the internal affairs of trusts in addition to general jurisdiction to hear proceedings on any basis permitted by the Constitution of California and of the United States.

B. THIS COURT SHOULD CONFIRM THAT PROBATE COURTS ARE PERMITTED TO HEAR ALL TRUST CONTESTS BECAUSE IT IS SOUND PUBLIC POLICY TO HAVE ALL TRUST CONTESTS HEARD AT ONE TIME SO THAT THE DECREE REGARDING THE VALIDITY OF THE CONTESTED INSTRUMENT IS FINAL AND BINDING ON ALL THE WORLD.

Probate courts generally exercise in rem jurisdiction whereas civil courts generally exercise in personam jurisdiction. (*Abels* v. *Frey* (1932)

126 Cal.App. 48, 53). As will be discussed below, the probate court's in rem jurisdiction may not extend to trust contests, however, trust contests function like an in rem proceeding. An action or proceeding in rem is one that affects the interests of all persons in the world to the property at issue. (2 Witkin, Cal. Procedure (5th ed. 2005) Jurisdiction, section 243, p. 846-47).

In rem jurisdiction is established when the appropriate petition has been filed and the notice required by the statute has been given. (*Estate of Wise* (1949) 34 Cal.2d 376, 382-383). By giving the notice prescribed by the statute the entire world is called before the court and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate. (*Abels* v. *Frey* (1932) 126 Cal.App. 48, 53). Probate decrees regarding heirship and distribution of the assets are binding on the whole world. (*Estate of Radovich* (1957) 48 Cal.2d 116, 122). In the *Estate of Wise*, *supra* the trial court made a finding that the decedent's siblings weren't heirs then issued a decree determining heirship. (*Estate of Wise*, *supra*, 34 Cal.2d 376, 382-383). The appellant in the *Estate of Wise* sought to void the binding effect of the heirship decree by arguing that the civil rules applied. (*Id.* at 381). However, the court found that the rules normally applicable to civil actions have no application in heirship proceedings because probate proceedings are not ordinary civil actions but

rather specialized proceedings in rem because the decree is binding on the whole world. (*Id.* at 383). This is an important concept in the instant appeal because after notice has been perfected on all the potential beneficiaries, the proceedings will be binding just like an in rem proceeding

The US Supreme Court held that American courts have sometimes classed certain actions as in rem because personal service of process was not required, and at other times have held that personal service of process was not required because the action was in rem. (*Mullane* v. *Cent. Hanover Bank & Trust Co.*, (1950) 339 U.S. 306). The U.S. Supreme Court in *Mullane* found that Central Hanover Bank couldn't settle an accounting for a common trust fund containing nearly 3 million dollars in 1946 for 113 separate inter vivos and testamentary trusts by only publishing notice in a local New York state newspaper. (*Id.* at 320). It should be noted that the only details the bank published in the newspaper regarding the accounting was the name and address of the trust company, the name and date of establishment of the common trust fund, and a list of all participating estates, trusts or funds. (*Id.* at 309). The U.S. Supreme Court found that the New York probate court lacked in rem jurisdiction over the 113 trusts in the common trust fund because the notice requirements under the New York statute violated the Fourteenth Amendment pertaining to depriving known persons whose whereabouts are also known of substantial property rights.