

MAY 2 2019

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Jorge Navarrete Clerk

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

Deputy

**APPEAL FROM THE SUPERIOR COURT OF
TUOLUMNE COUNTY**

Honorable Kate Powell Segerstrom, Judge

REPLY BRIEF ON THE MERITS

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

LAW OFFICES OF NATHAN D. PASTOR
NATHAN D. PASTOR (SBN 299235)
2033 N. Main St., Ste 750
Walnut Creek, CA 94596
nathan@nathanpastor.com
Phone: (925) 322-1012
Fax: (925) 322-6320

Attorney for Appellant
Joan Mauri Barefoot

RECEIVED

MAY 2 2019

TABLE OF CONTENTS

	PAGES
TABLE OF AUTHORITIES	3
INTRODUCTION.....	6
ARGUMENT	13
I. RESPONDENTS CONFLATE THE ISSUES AND MISINTERPRET THE LEGISLATIVE HISTORY	13
A. PROBATE CODE SECTION 850 CANNOT GENERALLY BE USED FOR TRUST CONTESTS.....	20
B. RESPONDENTS MAKE NO ATTEMPT AT ADDRESSING OR DISTINGUISHING SAKS V. DAIMON RAIKE & CO.....	25
C. PUBLIC POLICY DICTATES THAT MATTERS SHOULD NOT BE DISMISSED BECAUSE OF AN INCORRECT CAPTION.....	29
D. RESPONDENTS DON'T ADDRESS THE FACT THAT COURTS TAKE THE ALLEGATIONS IN THE PLEADINGS AS TRUE.....	31
II. APPELLANT'S OPENING BRIEF ON THE MERITS DOES NOT ARGUE ANY POINTS OUTSIDE THE SCOPE OF THIS APPEAL.....	32
CONCLUSION	33
CERTIFICATION OF WORD COUNT... ..	34
PROOF OF SERVICE	35

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Bloniarz v. Roloson</i> (1969) 70 Cal.2d 143, 149.....	30
<i>Bounds v. Superior Court</i> (2014) 229 Cal.App.4th 468.....	31
<i>Conservatorship of Irvine</i> (1995) 40 Cal.App.4th 1334.....	18, 19
<i>David v. Hermann</i> (2005)129 Cal.App.4 th 672.....	19
<i>Drake v. Pinkham</i> (2013) 217 Cal.App.4th 400.....	17, 18
<i>Estate of Buckley</i> (1982) 132 Cal.App.3d 434.....	7
<i>Estate of Lind</i> (1989) 209 Cal.App.3d 1424.....	31
<i>Estate of Mullins</i> (1988) 206 Cal.App.3d 924.....	27, 28
<i>Estate of Young</i> (2008) 160 Cal.App.4th 62.....	20, 21
<i>Lintz v. Lintz</i> (2014) 222 Cal.App.4th 1346.....	14, 15, 16
<i>Saks v. Damon Raike & Co</i> (1992) 7.Cal.App.4th 419.....	7, 25, 26, 28
<i>Warth v. Seldin</i> (1975) 422 U.S. 490.....	32

//

STATUTES

California Civil Code	
Section 1575.....	13, 14
California Code of Civil Procedure	
Section 581.....	31
Section 581 subdivision (m)	31
California Probate Code	
Section 86.....	14
Section 825.....	12
Section 850.....	8, 9, 10, 20, 21, 22, 23, 24, 25
Section 851 subdivision (c).....	24
Section 855	25
Section 859	25
Section 6104	15
Section 15800	17
Section 16000	28
Section 16061.7 subdivision (b)(2).....	11
Section 16061.7 subdivision (g).....	11
Section 17000.....	19, 26, 27, 28, 29
Section 17000 subdivision (b).....	25
Section 17001.....	27
Section 17200.....	8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, 31, 32, 33
Section 17200 subdivision (b)(3).....	10, 18, 19
Section 17200.1	9, 23
California Welfare and Institutions Code	
Section 15610.70.....	14
California Rules of Court	
Section 7.102.....	29
Section 8.516(a)(1).....	32
Section 8.516(a)(2).....	32
Section 8.516(b)(1)	32
Section 8.520(b)(2)(B)	33
Section 8.520(b)(3)	33

//
//

MISCELANEOUS

Cal. Law Revision Com., 54A West's Ann. Prob. Code (1991 ed). 17000,
p. 182.....26

Revised and Supplemental Comments to the New Probate Code, 20 Cal. L.
Revision Comm'n Reports 2001 (1990) div 9, part 1, section 15003.....27

Selected 1986 Trust and Probate Legislation, 18 Cal. L. Revision Comm'n
Reports 1201 (1986).....10, 13, 18, 26, 27

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

REPLY BRIEF ON THE MERITS

INTRODUCTION

As stated in Appellant's Petition for Review and Opening Brief, the issue before the Court is whether a former beneficiary of a trust has standing to challenge the validity of amendments to that trust that resulted in disinheritance. Appellant's Opening Brief presented voluminous analysis pertaining to how trust contests function within the broader framework of the entire Probate Code. Appellant's Opening Brief explains that there are no formal pleadings requirements for trust contests and, generally, all that must be plead to maintain standing in Probate Court is that the contestant would stand to gain from a successful trust contest. Additionally, Appellant explained how trust contests are identical to will

contests in the following two fundamental ways. First, the order determining the disposition of the trust or estate is in rem and binding on all the world. Second, although parties may elect to have some hybrid probate matters heard in a Civil Court, the law is clear that the Probate Court with jurisdiction over the trust or estate has complete and exclusive authority over every aspect of that trust or estate. These two principles are imperative to the final settlement of any trust or estate administration because the trustee or personal representative must know how to distribute the property. It is generally acknowledged that only the Probate Court has the authority to make in-rem orders settling the disposition of trusts thereby conclusively determining the interests of all persons to the trust property.¹ Appellant contends that public policy favors allowing the Probate Court to hear all trust contests. This Court can easily resolve the issues related to which parties have standing to contest a trust in Probate Court by holding that trust contests are identical to will contests in that any party who would stand to gain from a successful trust contest has standing to bring the contest in Probate Court. There is nothing in the Probate Code or any other law that would conflict with this conclusion.

Respondents' Answer Brief on the Merits muddles the issues in two significant ways. First, although the body of Respondents' Answer Brief

¹ *Saks v. Damon Raike & Co.* (1952) 7 Cal.App.4th 419, 429; *Estate of Buckley* (1982) 132 Cal.App.3d 443, 448

never explicitly argues that Probate Code 17200 cannot be used for any trust contests, subheading I(A) of their Answer Brief incorrectly states that Probate Code 17200 is not a vehicle for trust contests. (Respondents' Answer Brief on the Merits, hereinafter referred to as "AB" at 13). Second, Respondents erroneously assert that Probate Code 850 and common law are the appropriate vehicles to bring trust contests. Respondents entirely misinterpret the legislative history as well as how trust contests function within the framework of the Probate Code because Probate Code 850 does not apply to trust contests and cannot generally be used for trust contests. For example, Probate Code 850 pertains to the transfer of trust or estate property into or out of a trust or estate. This is a separate and distinct function from a trust contest where the contestant is asking the Probate Court to make an equitable order determining which version of the trust instrument is valid. The only time Probate Code 850 may relate to a trust contest is if the petitioner is seeking to transfer the trust property completely out of the trust. Probate Code 850 does not apply to the underlying trust contest in this matter because Appellant is not seeking to transfer the trust assets out of the trust. Rather, Appellant is seeking an equitable determination that the 17th through 24th amendments to the underlying trust be declared invalid.

Respondents contend that the Legislature intended for trust contests and other property related issues to remain under the purview of the Civil Code. (AB at 15). However, Respondents cite no authority that supports this contention. Respondents go so far as to state, “The legislature expressly excluded matters subject to Section 850 from Section 17200 by adding a new Section 17200.1 that provides as follows: ‘All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2.’” (AB at 17). However, there is no language in any statute, legislative history, or commentary that expressly states or even hints that matters subject to Probate Code 850 are expressly excluded from Probate Code 17200. Additionally, there is absolutely nothing in the legislative history that suggests that by adding Section 17200.1 in 2002 the Legislature intended for Probate Code 850 to be the exclusive means of seeking the transfer of trust property.² Quite to the contrary, in clarifying Probate Code 17200 the 1986 commentary explicitly states that the, “list of grounds for a petition concerning the internal affairs of a trust under subdivision (b) is not exclusive and is not intended to preclude a petition for any other purpose that can be characterized as an internal affair of the trust.” (*1986 Trust and Probate Legislation*, 18 Cal. L. Revision Comm’n Reports (1986), hereafter

² Even if it were, as clarified above, Probate Code 850 and the transfer of trust property does not generally relate to trust contests.

referred to as “CLRC Report” at 1437). This paragraph exemplifies how the Legislature intended to clean up the probate code by eliminating meaningless distinctions such as whether Probate Code 850 or Probate Code 17200 may be used to invalidate ill-gotten trusts or changes to the trust. There is no indication that the Legislature intended to bar disinherited trust beneficiaries from Probate Court. Furthermore, contrary to all of Respondents’ backwards assertions about what Probate Code 17200 can be used for, there is no matter more essential to the internal affairs of a trust than whether the trust itself or changes to that trust are valid or not. In fact, Probate Code 17200(b)(3) explicitly states that Probate Code 17200 is a vehicle for trust contests by confirming that the code section may be used for, “determining the validity of a trust provision.”

Respondents suggest that Appellant, the Settlor’s own daughter, is using Probate Code 17200 to meddle in the affairs of a private trust that would otherwise be free from judicial scrutiny. (AB at 8-9). Appellant is not seeking to meddle in the affairs of her mother’s trust. Rather, Appellant seeks a determination from the Probate Court on the merits of her underlying claims pertaining to the bad acts of Respondents that led to her disinheritance. Unfortunately for Appellant and other similarly situated litigants, Respondents have twisted the statutory framework out of context

to produce absurd results. For example, Respondents go so far as to allege that allowing disinherited trust beneficiaries to have their claims heard in Probate Court pursuant to Probate Code 17200 would invite chaos into the trust administration process. (AB at 9). This is an odd assertion because Respondents, and even the Fifth District Court of Appeal, acknowledge that disinherited beneficiaries have the right to contest the ill-gotten trust or changes to the trust. Therefore, Appellant is unsure why what code section a petitioner uses to contest the instrument is relevant to whether there is chaos or not because the instrument will be contested one way or another. The Legislature clearly acknowledged that disinherited beneficiaries have the right to bring trust contests because the trustee is required to notify the heirs at law that they are entitled to a copy of the terms of the trust and that they may not bring a trust contest more than 120 days after the notification or 60 days from the date on which a copy of the terms of the trust are delivered, whichever is later.³ Strangely, Respondents and the Fifth District Court of Appeal's main gripe appears to be with the form of the pleadings and whether a disinherited beneficiary should file a civil complaint versus a probate petition. This hyper technical distinction contravenes the intent of the Legislature and well-established case law. For example, the Legislature never intended to limit the Probate Court's powers

³ See Probate Codes 16061.7(b)(2), 16061.7(g)(5) and (h)

in any way and there is no indication that the Legislature intended on barring disinherited beneficiaries from initiating trust contests pursuant to Probate Code 17200.

The Fifth District Court of Appeal's decision has made it exceedingly difficult for disinherited trust beneficiaries to get rulings on their underlying claims. One example of this is that to work around the Fifth District Court of Appeal's decision barring disinherited trust beneficiaries from Probate Court, disinherited trust beneficiaries must file complaints wholly dependent on civil statutes for relief. Those disinherited beneficiaries may then have to have their trust contests heard by a jury. This is in express contradiction to the Legislature's intent to have will and trust contests determined by a judge rather than by a jury. This intent is codified by Probate Code 825. Probate Code 825 specifically states that except as otherwise expressly provided in the Probate Code, there is no right to a jury trial in proceedings under the Probate Code. There is no such pronouncement in the Civil Code. Appellant notes that the question in this appeal is not whether Appellant has civil remedies, but whether she has standing to contest the changes to the trust that disinherited her in Probate Court.

This Court should find that disinherited trust beneficiaries have standing to challenge changes to the trust that resulted in their disinheritance in Probate Court.

ARGUMENT

I. RESPONDENTS CONFLATE THE ISSUES AND MISINTERPRET THE LEGISLATIVE HISTORY.

Respondents erroneously argue that trust contests and other property related issues fall under the purview of the Civil Code rather than the Probate Code. Specifically, Respondents argue that because there is no mention of trust contests in the CLRC Report trust contests are governed by the Civil Code. (AB at 14). This argument wholly misinterprets the legislative history and intent. For example, Respondents suggest that because the CLRC Report does not describe Probate Code 17200 or make any other mention of trust contests, trust contests and other property related issues remained in the purview of the Civil Code. (AB at 14). Respondents state that causes of action for undue influence and other causes of action for setting aside trusts were not repealed by the 1986 legislation and continue to be vehicles to set aside trusts. Specifically, Respondents argue that causes of action for undue influence and other causes of action for setting aside trusts continue to be governed by the Civil Code. (AB at 15). Respondents point to Civil Code 1575 for the definition of undue influence. However, this wholly misses the boat regarding how undue influence

functions within the context of the Probate Code. For example, the prior definition of undue influence contained in Civil Code 1575 was enacted in 1872 within the context of contract law. However, effective January 1, 2014, California adopted Probate Code 86 which provided a new definition for undue influence within the context of the Probate Code. Probate Code 86 states that undue influence has the same meaning as Welfare and Institutions Code 15610.70. Probate Code 86 also states that it is the intent of the Legislature that Probate Code 86 supplement the common law meaning of undue influence without superseding or interfering with the operation of that law. Probate Code 86 is commonly how undue influence is plead within the context of a trust contest. *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346 exemplifies how undue influence is commonly plead within the context of trust contests.⁴ Appellant's Opening Brief provides a full analysis concerning how the *Lintz* court strongly implies that Probate Code 17200 is the proper vehicle for disinherited beneficiaries to bring their claims to invalidate ill-gotten trust amendments based on undue influence. (Appellant's Opening Brief on the Merits, hereinafter referred to as "OB" at 29-30). Appellant will not repeat a full analysis of *Lintz* here, however, Appellant will add a few pertinent details pertaining to how the

⁴ It should be noted that Respondents' AB entirely fails to address *Lintz* and its strong implication that Probate Code 17200 is the proper vehicle for trust contests as well as the implications it makes pertaining to how undue influence is plead within the context of the Probate Code.

Lintz matter exemplifies how undue influence specifically applies to trust contests filed by disinherited trust beneficiaries within the context of Probate Code 17200. In *Lintz* the decedent was an elderly multi-millionaire retired developer. (*Id.* at 1350). The decedent amended his trust several times after marrying his third wife, first naming her as a 50 percent beneficiary, then repeatedly amending the trust, each time, giving the third wife a larger share of the decedent's estate while increasingly disinheriting the decedent's children. (*Id.*). Finally, decedent and the third wife, as joint settlors and trustees, executed a new trust, prepared at the third wife's direction by the third wife's attorney. (*Id.*). In the new trust all the decedent's property was characterized as community property, the third wife was given exclusive life interest in decedent's estate and given the right to disinherit decedent's youngest child and leave any unspent residue to decedent's two children from a prior marriage. (*Id.*). The decedent died a year later. (*Id.*). Decedent's children filed a lawsuit against the third wife alleging elder abuse and undue influence. (*Id.*). The Probate Court in *Lintz* invalidated the ill-gotten trust and changes to the trust. (*Id.* at 1349). In support of its finding that the instruments were procured by undue influence the *Lintz* court found that the Probate Court properly set aside the ill-gotten amendments to the decedent's trust by borrowing from Probate Code 6104 which states, "the execution or revocation of a will or a part of a

will is ineffective to the extent the execution or revocation was procured by duress, menace, fraud, or undue influence.” (*Id.* at 1356-1357). The Sixth District Court of Appeal affirmed the Probate Court’s reasoning on appeal. (*Id.*) The *Lintz* matter as it pertains to undue influence within the context of trust contests helps to demonstrate two of Appellant’s main points. First, it reveals that Respondents incorrectly analyze how undue influence operates within the context of the Probate Code. Second, it exemplifies how Probate Courts regularly pull from the well-established and vast body of law on will contests and apply it equally to the minimal law on trust contests.

It is unclear from Respondents’ Answer Brief whether they contend that beneficiaries under the most recent iteration of the trust may initiate trust contests pursuant to Probate Code 17200 or whether Respondents contend that no one may initiate trust contests pursuant to Probate Code 17200. However, case law is clear that Probate Code 17200 may be used for trust contests. If Respondents are contending that Probate Code 17200 may only be used for trust contests by current beneficiaries, there is no reason to draw such a meaningless distinction. For example, applying this logic, if an heir at law has a one percent interest in the trust, they are permitted to bring a trust contest pursuant to Probate Code 17200. However, if that heir at law has a zero percent interest, they are not

permitted to bring a trust contest pursuant to Probate Code 17200. There is no logical reason to draw such a meaningless distinction. Respondents' Answer Brief does little to untangle this issue. In any event, Appellant's Opening Brief provides voluminous analysis pertaining to Probate Code 17200's applicability to trust contests.

Even the Fifth District Court of Appeal recognized that Probate Code 17200 can be used for trust contests when it stated, "Our ruling here comports with the general conclusion in *Drake* that claims of incompetence provide beneficiaries with their usual rights when challenging trusts. *Drake* stands for the unremarkable position that an allegation of incompetence provides sufficient grounds for a beneficiary of a trust to proceed with a petition under Section 17200, while noting that the beneficiary will ultimately have to demonstrate incompetence to maintain their standing." (Fifth DCA Opinion at 7). The *Drake* court confirmed that nothing in Probate Codes 17200 or 15800 precluded the disinherited daughter in that matter from bringing a trust contest to set aside the amendments to her mother's trust that disinherited her prior to her mother's death so long as the daughter established her mother's incapacity prior to her death. (*Drake v. Pinkham* 217 Cal.App.4th 409).⁵ Therefore, case law is clear that Probate Code 17200 is to be used for trust contests.

⁵ Appellant notes that page 19 of Respondents AB claims that *Drake v. Pinkham* did not analyze whether there was a difference between a current and a former beneficiary or what the proper

In fact, Probate Code 17200 is the quintessential vehicle for bringing a trust because there is no matter more essential to the internal affairs of a trust than whether the operative instrument is valid or not. As discussed above, the CLRC Report specifically stated that the, “list of grounds for a petition concerning the internal affairs of a trust under subdivision (b) is not exclusive and is not intended to preclude a petition for any other purpose that can be characterized as an internal affair of the trust.” (CLRC Report at 1437). Additionally, Probate Code 17200(b)(3) explicitly states that Probate Code 17200 is a vehicle for trust contests by confirming that the code section may be used for, “determining the validity of a trust provision.” In the *Conservatorship of Irvine* (1995) 40 Cal.App.4th 1334 the Fourth District Court of Appeal found that it is clear from viewing Probate Code 17200 as a whole that the Probate Court has jurisdiction over both inter vivos and testamentary trusts to entertain petitions for instructions regarding the validity (and thus, invalidity) of trust agreements or amendments. (*Id.* at 1341). Furthermore, the *Conservatorship of Irvine* court found that Probate Code 17200(b)(3) and (13) could be used to determine the validity of changes to the trust and approving or disapproving of modifications to the trust. (*Id.* at 1342). The *Conservatorship of Irvine*

vehicle for a trust contest is. However, the *Drake v. Pinkham* decision clearly implies that a former beneficiary has standing to bring a trust contest pursuant to Probate Code 17200 so long as incapacity is established. Therefore, applying this same logic, a disinherited trust beneficiary should have standing under Probate Code 17200 after a settlor’s death.

court held that even if the petition to determine the validity of the change to the trust did not fall within the literal provisions of Probate Code 17200 it nevertheless would fall within the general jurisdiction of the Probate Court under Probate Codes 17000 and 17200 for proceedings concerning the internal affairs of a trust or to determine the existence of a trust (and presumably, the existence of an amendment to that trust). (*Id.* at 1342-1343). This concept is confirmed by the *David v. Hermann* 129 Cal.App.4th 672. The *David v. Hermann* court that found that the Probate Court had exclusive jurisdiction pursuant to Probate Code 17000 over a proceeding involving a petition challenging the dispositive provisions of a living trust, which was construed as a proceeding to determine the validity of a trust provision that came within the category of proceedings concerning the internal affairs of a trust under Probate Code 17200(b)(3). (*Id.* at 682-683).

The *Conservatorship of Irvine* matter highlights an interesting point relevant to this appeal. In the *Conservatorship of Irvine* matter the trustee brought a petition for instructions pursuant to Probate Code 17200 seeking a determination regarding the validity or invalidity of the amendment in question. (*Conservatorship of Irvine, supra*, 40 Cal.App.4th 1336). However, in the case at hand, the bad actor, Appellant's sister, one of the Respondents, became the trustee through her bad acts and has actively

taken steps to block Appellant from bringing her trust contest. Assuming arguendo that disinherited beneficiaries lack standing under Probate Code 17200, it is contrary to public policy to allow trustees who took office through their bad acts to essentially control who does and does have standing under Probate Code 17200.

A. PROBATE CODE SECTION 850 CANNOT GENERALLY BE USED FOR TRUST CONTESTS.

Respondents repeatedly and incorrectly classify trust contests as proceedings concerning the transfer of trust property. Trust contests are not proceedings concerning the transfer of trust property. Trust contests are specialized proceedings whereby Probate Courts make equitable determinations concerning which version of the trust is the operative instrument. Probate Code 850 relates to the transfer of property into or out of a trust or estate and cannot generally be used to invalidate a trust or trust provision. Probate Code 850 may apply to trust contests only in the narrowest of contexts. This narrow context is if the petitioner is seeking to transfer property completely out of the trust. This narrow context is exemplified by the only case cited by Respondents pertaining to how Probate Code 850 may relate to trust contests, *Estate of Young* (2008) 160 Cal.App.4th 62, that they argue stands for the proposition that Probate Code 850 can be used for trust contests. Before jumping into an analysis of *Estate of Young*, it should be noted that although the Probate Court in the

Estate of Young was able to use Probate Code 850 to transfer property completely out of the trust, the *Estate of Young* opinion never explicitly states that Probate Code 850 can be used for trust contests or to set aside trusts. *Estate of Young* is a case pertaining to property that was wrongfully transferred into a trust. (*Id.* at 67-68). Subsequently, the Probate Court transferred the trust property completely out of that trust to the administrator of the decedent's estate pursuant to Probate Code 850. (*Id.* at 68). The *Estate of Young* is entirely different from the case at hand because Appellant is asking the Court to restore the trust to a previous iteration of the same trust. Appellant is not asking that the entire trust be invalidated or that property be transferred out of the trust. Rather, Appellant initiated a very specific probate proceeding whereby she seeks a determination that six separate trust amendments and restated trusts be set aside due to lack of capacity, undue influence, elder abuse and fraud.

The following hypothetical is offered by Appellant to illustrate the above distinction between Probate Code 17200 and 850 and why Probate Code 850 cannot generally be used for trust contests.

The Settlor's original trust leaves the Settlor's trust property equally to Settlor's only six children. In other words, a natural disposition. However, one month before the Settlor's death, the Settlor executes an amendment to the trust directing that one hundred percent of the

trust property goes to one of the six children and the other five children are specifically disinherited. After the Settlor dies the five disinherited children bring a trust contest seeking to invalidate the amendment disinheriting them and restoring the trust to the last valid amendment that equally disposes the trust property to all six children as trust beneficiaries.

In the above hypothetical there will be no transfer of trust property. Rather, there will be an in-rem order settling the disposition of the trust and conclusively determining the interests of all persons to the trust property. If the Probate Court restores the trust to the original trust where the trust is to be distributed equally to the Settlor's children, there may be later disagreements regarding what constitutes an equal distribution. For example, if the trust is not all cash, there may be arguments about valuations or which beneficiary is to get which real property if there is real property to be distributed. In that situation there may be litigation regarding how exactly the trust property is to be distributed, however, that would be a separate and distinct proceeding from the disposition of the trust contest whereby the Probate Court is restoring the trust to the last validly executed iteration of the trust.

Respondents make the broad and sweeping argument that the Legislature intended for Probate Code 850 to be the primary code section

used for trust contests because Probate Code 17200.1 provides that all proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 commencing with Section 850. Respondents go so far as to pronounce that in 2002 the Legislature expressly excluded matters subject to Section 850 from 17200 by adding a new Section 17200.1 that provides: “All proceedings concerning the transfer of property of the trust shall be conducted pursuant to the provisions of Part 19 (commencing with Section 850) of Division 2.” (AB at 17). However, contrary to Respondents pronouncement, the 2002 legislation makes absolutely no mention of trust contests. There is nothing in the legislative history, notes, or commentary that states that Probate Code 850 was ever intended to be used for trust contests at all. Probate Code 850 is a broad hybrid Probate Code section applicable equally to trusts and estates and pertaining to the transfer of trust and estate property. Probate Code 850 encompasses both property that was wrongfully conveyed to a third party and property that a settlor unintentionally failed to retitle into the name of their trust.

Respondents argue that by adding additional notice requirements to petitions initiated pursuant to Probate Code 850 in 2017 the Legislature showed that it did not intend for Probate Code 17200 to be used for trusts contests. (AB at 19). However, the Legislature did not evidence any intent

pertaining to trust contests by adding Probate Code 851(c) in 2017. Probate Code 851(c) added additional notice requirements for Probate Code 850 petitions because parties who were in possession of trust or estate property did not understand the severity of failing to respond to a Probate Code 850 petition seeking the return of the property. For example, the recommendation of the Executive Committee of the Trust and Estates Section of the State Bar of California explained that the language of a standard Notice of Hearing concerning property held by the third party that was claimed to belong to the estate failed to convey the potential seriousness of the proceeding to interested holder of the property. (Respondents Motion for Judicial Notice, Exhibit B at 5). One committee member had a client who received a notice of hearing with the petition seeking for the client to return property, did not realize the significance of the hearing, did not retain counsel, and, when he failed to appear, the court defaulted him and entered judgment resulting in the loss of the property. (*Id.*). The proposed legislation and the enhanced notice requirements added in 2017 requiring additional language in a notice of hearing concerning a Probate Code 850 has no direct correlation to trust contests. This example further exemplifies how trust contests pursuant to Probate Code 17200 differ from and do not interrelate to proceedings seeking the transfer of trust property pursuant to Probate Code 850.

Respondents incorrectly contend that Probate Codes 855 and 859 provide avenues for challenging a trust through Probate Court proceedings and for bringing claims and causes of action that would normally be civil in nature. (AB at 26-27). Respondents misinterpret the function of Probate Code 850. Part 19 of the Probate Code containing Probate Codes 850 through 859 is entitled, “Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person.” As the title suggests, there is nothing in these code sections that relates to trust contests. Rather, the code sections in this sub part apply only to the transfer of trust or estate property into or out of a trust or estate, and, as discussed above, are not generally applicable to trust contests.

B. RESPONDENTS MAKE NO ATTEMPT AT ADDRESSING OR DISTINGUISHING SAKS V. DAMON RAIKE & CO.

It is telling that Respondents entirely fail to cite *Saks* supra 7 Cal.App.4th at 419, 429 which is the seminal case on point pertaining to the Probate Court’s jurisdiction to hear all claims brought before it. As discussed in Appellant’s Opening brief, *Saks* stands for the proposition that in addition to having general jurisdiction, Probate Courts also have exclusive jurisdiction to hear cases regarding the internal affairs of trusts. (*Id.*). 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). Appellant will provide a more detailed history and background of *Saks* below to emphasize its importance to the issues raised by this appeal.

The Probate Court was abolished as a separate court in 1879. (CLRC Report at 1281). Following the abolition of the Probate Court as a separate court, the California Courts managed to retain limited jurisdiction concepts for probate matters by creation of the concept of the Superior Court sitting in probate. (*Id.*). This resulted in decades of litigation regarding the parameters of the power of the Superior Court sitting in probate, particularly with respect to jurisdiction to decide cases involving “third parties” and powers to grant equitable remedies. (*Id.* at 1281-1282). Until 1971 testamentary trust matters were probate matters, however, disputes involving revocable living trusts were treated as civil matters. (*Id.*). At that juncture, some matters concerning revocable living trusts became probate matters. (*Id.*). This led to a situation where cautious practitioners would double file cases in civil and probate if the matter vaguely appeared to involve a hybrid probate and civil matter. This duplicitous and wasteful double filing technique was resolved by the following legislation and case law. In 1986 the new California Trust Law was enacted and Probate Code 17000 made it clear that the Superior Court

had jurisdiction over the internal affairs of trusts and Probate Code 17001 made clear that the court was a “full power court” when exercising jurisdiction. (*Id.* at 1429-1430). The latter provision presumably made clear that the Superior Court could exercise all its powers, including equitable powers, when exercising jurisdiction over trusts. (*Id.*) It was a logical assumption that Probate Codes 17000-17001 had the effect of eliminating any jurisdictional distinctions between the Superior Court acting in exercise of its trust jurisdiction and the Superior Court operating in exercise of its general jurisdiction. This view was not shared by the Second District Court of Appeal in the *Estate of Mullins* (1988) 206 Cal.App.3d 924, 930. The probate petition in the *Estate of Mullins* matter claimed that the deceased settlor of a living trust was contractually obligated to leave half of her estate to specified persons. (*Id.* at 926). It sought a declaration that the trustee of the decedent’s revocable trust held the trust estate as a constructive trustee for the benefit of petitioners. (*Id.*) The Superior Court sitting in probate dismissed the case on the grounds of lack of jurisdiction and the Second District Court of Appeal affirmed. (*Id.* at 932). The CLRC promptly sponsored legislation amending Probate Code 17001. (*Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm’n Reports 2001 (1990) div 9, part 1, section 15003). The Law Revision Comment for the amendment stated in

part, “the 1990 amendment revised subdivision (a) to avoid any implication that this provision is a limitation on the jurisdiction of the superior court in proceedings under this division. This amendment is intended to reject dicta Estate of Mullins, 206 Cal.App.3d 924, 931.” (*Id.*).

Shortly thereafter came *Saks*. *Saks* was an action filed in the Superior Court by beneficiaries of a trust against an attorney for the trust and a real estate broker arising out of the sale of real property owned by the trust and the purchase of other property. (*Saks, supra*, 7 Cal.App.4th at 422). The trial court sustained defendants’ demurrers without leave to amend and dismissed the action. (*Id.*). The First District Court of Appeal affirmed and held that because the nature of the claims the beneficiaries lacked standing to bring their claims in the Superior Court. (*Id.* at 430). Under both the common law and the provisions of the Probate Code governing the administration of trusts (Probate Codes 16000 and 17000) the beneficiaries’ only proper course was to proceed against the trustee in the probate department, seeking either to compel it to proceed against the attorney and the broker, or to remove the trustee and to appoint a trustee ad litem to sue the third parties. (*Id.*). *Saks* confirmed the principle that the Probate Court is a court of general jurisdiction, has all the powers of the Superior Court, and has exclusive jurisdiction over trusts. (*Id.* at 429, 432). The *Saks* matter and all the legislation that ultimately led to the *Saks*

decision sought to rid the system of duplicitous and wasteful filings and consolidate trust matters in the Probate Court. The Fifth District Court of Appeal's decision undoes this case law and legislation by instructing that a "complaint alleging the same causes of action would not be barred by the beneficiary limitation of section 17200." (Fifth DCA Opinion at 5). Now, after the Fifth DCA's opinion, cautious practitioners representing disinherited trust beneficiaries will again double file trust contests as a complaint and a petition alleging the exact same facts, one seeking relief under civil statutes and the other seeking relief under probate statutes, to ensure that the client's rights are preserved. These meaningless distinctions that create barriers to the Probate Court and judicial waste are precisely what the Legislature has been working to abolish for decades.

C. PUBLIC POLICY DICTATES THAT MATTERS SHOULD NOT BE DISMISSED BECAUSE OF AN INCORRECT CAPTION.

Respondents' Answer Brief argues that because the caption of Appellant's petition only cited Probate Codes 17000 and 17200 she was not entitled to relief under any other code sections. (AB at 27-28).

Respondents cite to Rule of Court 7.102 which states that the title of the pleadings must clearly and completely identify the nature of the relief sought. (*Id.*). However, the nature of an action and the issues involved are to be determined, not from the appellation given in the pleading, but from

the facts alleged and the relief that they support. (*Bloniarz v. Roloson* (1969) 70 Cal.2d 143, 149). It is well established public policy that cases should be tried on their merits rather than dismissed for technical defects in the pleadings. *Id.* Appellant's underlying pleadings are wholly sufficient because Appellant's pleadings clearly stated the relief sought and the facts that supported the relief sought. For example, Appellant's pleadings challenged the validity of the 17th through 24th amendments to the Trust on three grounds. (Clerk's Transcript, hereinafter referred to as "CT" 6-12, 124-33). In the first, Appellant alleged that her mother 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 one of the Respondents who received a large share from the Trust. (CT-8). In the third, Appellant alleged fraud on behalf of one of the Respondents, 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 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). Therefore, it was clear from Appellant's pleadings what the facts she alleged, and the relief sought based on those

facts. Appellant should have been allowed to proceed on the merits of her claims even if the court believed the caption to be incorrect for some technical reason.

D. RESPONDENTS DON'T ADDRESS THE FACT THAT COURTS TAKE THE ALLEGATIONS IN THE PLEADINGS AS TRUE.

Respondents make no attempt at addressing the fact that courts take the allegations in the pleadings as true to establish standing. As plead in this case, the trust amendments are invalid and at the pleading stage of the case the Court must accept these allegations as true. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 483). Any allegations that Appellant's claims are speculation or conjecture lacking evidentiary support frames the issues for trial, not a demurrer or a motion to dismiss. (*Id.* at 483).⁶ At the pleading stage, as here, the party only needs to allege facts sufficient to establish standing. (*Estate of Lind* (1989) 209 Cal.App.3d 1424, 1430, 1434). The contestant's ability to prove those allegations is not the concern of the reviewing court. (*Id.* at 1430). The U.S. Supreme Court has long

⁶ Appellant's OB argues that dismissal of Appellant's petition for lack of standing was inappropriate because lack of standing is not listed as a ground for dismissal under Code of Civil Procedure 581. (OB at 44). On page 34 of Respondents' AB they argue that although 581 does not specifically enumerate lack of standing, Code of Civil Procedure 581(m) states that the list in that code section shall not be deemed to be exhaustive. Appellant notes that similarly, Probate Code 17200(b) states that proceedings concerning the internal affairs of a trust, include "but are not limited to" the following. Respondents therefore undercut their own argument that because 17200 does not specifically state the words "trust contest," trust contests do not concern the internal affairs of a trust because like Code of Civil Procedure 581(m), Probate Code 17200(b) specifically states that the list of the internal affairs of a trust is not exhaustive.

adhered to this same rule: “For purposes of ruling on a motion to dismiss for want of standing, both the trial court and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” (*Warth v. Seldin* (1975) 422 U.S. 490, 501). *Warth v. Seldin* was superseded on other grounds by later legislation, however, the stated rules regarding accepting all material allegations of the complaint as true and in favor of the complaining party holds. Assuming arguendo that Probate Code 17200 applies only to current beneficiaries, then, applying the above principles, Appellant has standing under Probate Code 17200 because if the Court takes the pleadings as true to establish standing then Appellant is a current beneficiary of the trust because the amendments that disinherited her were never valid, are currently invalid, and Appellant is a beneficiary of the last valid operative trust instrument.

II. APPELLANT’S OPENING BRIEF ON THE MERITS DOES NOT ARGUE ANY POINTS THAT ARE OUTSIDE THE SCOPE OF THIS APPEAL.

Rule of Court Rules 8.516(a)(1) and (2) state that unless the Court orders otherwise, the parties must limit their briefs and arguments to the issues stated in the petition for review or answer and any issues fairly included in them. Rule of Court Rule 8.516(b)(1) states that the Court may decide any issues that are raised or fairly included in the petition or answer.

Finally, Rule of Court Rules 8.520(b)(2)(B) and (3) state that the opening brief on the merits must be limited to the issues stated in the petition for review and any issues fairly included in them. The scope of this appeal covers the vast body of probate law pertaining to whether a disinherited trust beneficiary has standing to contest the amendments to that trust that resulted in disinheritance. To properly brief the issues the scope of the arguments necessitated an explanation of how trust contests function within the context of the Probate Code when read as a whole. Therefore, all issues argued in Appellant's opening brief on the merits were squarely within the scope of this appeal and the issue presented.

CONCLUSION

This Court should overrule the Fifth DCA's opinion and confirm that Appellant has standing to proceed with her trust contest in Probate Court pursuant to Probate Code 17200, common law and other statutes. This Court can correct all issues raised by this appeal by confirming that in order to have standing under Probate Code 17200 a disinherited trust beneficiary must allege that he or she would benefit from having the instrument set aside either by returning the instrument to the last valid iteration of the instrument or through intestacy if the petitioner is seeking to set aside the entirety of the trust.

Dated: May 1, 2019

Respectfully submitted,



Nathan D. Pastor
State Bar No. 299235
Attorney for Appellant
Joan Mauri Barefoot

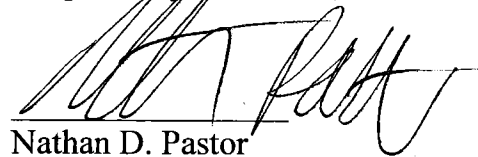
CERTIFICATION OF WORD COUNT

I, Nathan D. Pastor, hereby certify in accordance with California Rules of Court, rule 8.504(d)(1), that this brief contains 7,046 words as calculated by the Microsoft Word software in which it was written.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: May 1, 2019

Respectfully submitted,



Nathan D. Pastor

PROOF OF SERVICE

I am employed in the County of Contra Costa, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 2033 N. Main St., Ste 750, Walnut Creek, CA 94596.

On May 1, 2019, I served true copies of the following document described as:

REPLY BRIEF ON THE MERITS

on the following:

Court of Appeal of California, Fifth Appellate District
2424 Ventura St.
Fresno, CA 93721

Superior Court of California, County of Tuolumne
41 West Yaney Avenue
Sonora, CA 95370

Sean M. SeLegue
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024

Eric T. Nielson
Michael L. Gianelli
Gianelli Nielsen, APLC
1014 16th Street
Modesto, CA 95354

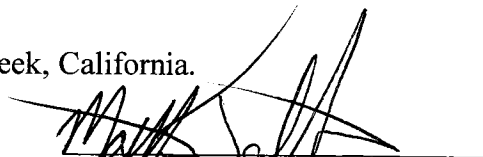
Dana Anthony Berry, Sr.
5149 Bain Street
Mira Loma, CA 91752

BY US MAIL

I caused the above referenced document(s) to be delivered via US MAIL for delivery to the above addresses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 1, 2019, at Walnut Creek, California.


Matthew B. Talbot