2022 Hot Cases:
Annual Review of Key Probate Decisions

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Autonomous Region of Narcotics Anonymous v. Narcotics Anonymous World Services (2022) 77 Cal.App.5th 950.

"Hold on, that's not the same guy"

Autonomous Region of Narcotics Anonymous v. Narcotics Anonymous World Services (2022) 77 Cal.App.5th 950.

Holding:

No standing for a regional delegate to sue a trustee when the regional delegate is one of many groups that collectively constituted the trust's settlor, but in and of itself was neither "*a* settlor" nor "*the* settlor." Demurrer sustained without leave to amend on the basis of lack of standing was correct.

Autonomous Region of Narcotics Anonymous v. Narcotics Anonymous World Services (2022) 77 Cal.App.5th 950.

Facts:

- The Fellowship of Narcotics Anonymous (FNA) has a revocable charitable trust that controls its intellectual property.
- Trust states:
  - Settlor/Trustor = "*The Fellowship of Narcotics Anonymous, as given voice by its groups through their regional delegates at the World Service Conference*." Operational Rules in the Trust explain that *the Fellowship is the equitable owner of the property in trust, and the basic collective unit of the Fellowship is the local Narcotics Anonymous Group*. FNA acts through delegates who represent groups within the Fellowship; members meet in local groups; each region has a delegate.
  - Trustee = Narcotics Anonymous World Services, Inc.
  - Beneficiary = the Fellowship "as a whole"
  - Assets = all Narcotics Anonymous I.P., including literature (books, booklets, pamphlets, etc.)
- Autonomous Region of Narcotics Anonymous (AR) petitioned for breach of trust/trustee's duties.
  - AR alleged it was "an interested party" of the trust, i.e., "*a regional delegate group of [FNA] with a voice at the World Service Conference who has a special and definite interest in the charitable Trust*."
- World Services demurred. Judge Small/Probate Court first allowed supplemental briefing, then sustained demurrer without leave to amend because AR lacked standing.
- Affirmed. Leave to amend would have been futile. AR is not a settlor who may petition.

Autonomous Region of Narcotics Anonymous v. Narcotics Anonymous World Services (2022) 77 Cal.App.5th 950.

Saucy!

- "Our analysis has four steps. First, we review some law about charitable trusts. Second, we engage in textual interpretation: we explain why one cannot construe the text of this trust document to make Autonomous Region its settlor. Third, we tackle special standing. Fourth, we affirm the probate court's denial of leave to amend.
- "Our tour of charitable trust law begins by defining a trust . . .
- "it is impossible to interpret the trust's text to make [AR] a settlor . . .
- "This rule manifests our respect for the intelligence and effort of the drafters [of a trust], whose intent deserves our allegiance . . .
- "Other parts of the document explode the notion of multiple settlors . . .
- "What are we to make of this? . . .
- "*Holt* opened the door . . . but opened it cautiously . . Courts nationwide share this concern . . . For more than half a century, *Holt* has been a beacon . . . Yet, in all this time, apparently no case, in California or for that matter anywhere in the United States, has considered . . ."

Autonomous Region of Narcotics Anonymous v. Narcotics Anonymous World Services (2022) 77 Cal.App.5th 950.

Authority:

Charitable Trust

- A trust is an intentional fiduciary relationship with respect to property that a fiduciary holds for the benefit of another such as a charity. (Paraphrased)
- The Probate Code generally applies to charitable trust under the jurisdiction of the Attorney General unless it conflicts with Gov. Code, 12580 et seq. (Prob. Code, 15004.)
- *Holt v. College of Osteopathic Physicians and Surgeons* (1964) 61 Cal.2d 750, 753-754 [California law re: who can sue a charitable trust]
  - Common law applies to current Probate Code via section 15002

Standing

- While a trust is revocable and the person holding the power to revoke remains competent, the trustee owes duties to the person holding the power to revoke the trust. (Prob. Code, 15800.)
  - i.e., Settlor may petition for breach of trust by trustee when trust is revocable and settlor is competent

Special Interest Standing

- Defined in *Holt* and defined in Rest.3d Trusts, § 94, p. 4.
- "A suit for the enforcement of a charitable trust may be maintained only by the AG or other appropriate public officer or by a cotrustee or successor trustee, by a settlor, *or by another person who has a special interest in the enforcement of the trust*."
  - Charitable trust benefits the members of a described group of persons that is reasonably limited.
  - Member(s) may be allowed to maintain a suit, on behalf of its members generally, against the trustee for enforcement of the trust.
  - AG "may not be in a position to become aware of wrongful conduct or to be sufficiently familiar with the situation to appreciate its impact, and the various responsibilities of his office may also tend to make it burdensome for him to institute legal actions except in situations of serious public detriment."
- Solves the problem of providing adequate supervision and enforcement of charitable trusts. (*Holt* at 754.)
  - Balances policy concerns and objectives.
- However, no case in CA or U.S. has considered whether this rule should extend to revocable trusts; no precedent, no.

Autonomous Region of Narcotics Anonymous v. Narcotics Anonymous World Services (2022) 77 Cal.App.5th 950.

Analysis:

- Interpretation/Standing: Trust is revocable, thus, Settlor may petition for breach of trust. AR is not Settlor. AR's interpretation fails. Trust states the settlor is FNA "*as given voice by its groups through their regional delegates . . .*" The groups/delegates are not the settlors; the collective voice is the settlor. Overwhelming evidence.
- Demurrer/Supp Briefing: "Extrinsic evidence in this case is cause for wonder. We are reviewing a demurrer ruling, and demurrers must focus on the pleading, not on evidence." (Paraphrase: no speaking demurrers.)
  - Court of appeal construed the supplemental briefing re: facts considered as offers of proof to convince the probate court to grant leave to amend.
- Special Interest Standing: There is no special standing to enforce charitable trusts that are revocable. "Revocability matters. Whether the settlor can or cannot revoke its trust is a central feature of the trust mechanism . . . *The problem of lapsed supervision and attendant mismanagement does not exist when the trust is revocable.*"

Conclusion:

- "The [probate] court's interpretation of the trust was correct: as a matter of law, [AR] is not *the* settlor or *a* settlor."
- "The [probate] court was also right to rule that, because this trust is revocable, [AR] lacked special standing."
- The Probate Court properly denied leave to amend.
- Affirmed.

Estate of Douglas (2022) 83 Cal.App.5th 690.

"Nunc Pro Tunc Slam Dunk"

Order processing

Estate of Douglas (2022) 83 Cal.App.5th 690.

Holding

Trial court did not abuse its discretion in correcting clerical error in a petition and order for renewed judgment that failed to state judgment debtor's capacity as administrator after her name.

Estate of Douglas (2022) 83 Cal.App.5th 690.

Facts

- Administrator Audrey obtained an order approving waiver of decedent's final account and report, for distribution, and for fees and costs
- Judgment identified Audrey as petitioner
- Years later, attorneys filed an application for and renewal of judgment
- Judgment debtor identified as "Audrey" but did not state that she was a party to the action in her representative capacity as administrator of the estate.
- Clerk issued the notice of renewal of judgment as requested (just "Audrey")
- Attorneys then filed a motion to correct a clerical error in the application and renewed judgment, i.e., to correct the order nunc pro tunc to insert "as administrator of the estate of [whatshisname]" after "Audrey"
- Appellant opposed the motion, ordering that the clerk's entry of the renewal morphed the judgment into a personal obligation of Audrey, rather than an obligation of her in her capacity as administrator.
- Trial court granted the motion to correct clerical error.
- Court of appeal affirmed.

Estate of Douglas (2022) 83 Cal.App.5th 690.

Authority

Correction of Error

- Code Civ. Proc., 473, subd. (d)
  - "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."
- *Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1034.
  - "It is well settled that a court has the inherent power to correct [a] clerical error in its judgment so that the judgment will reflect the true facts. [Citation.] The power of a court to correct clerical mistakes in judgments is also a statutory power pursuant to section 473."
  - Clerical error is distinguished from judicial error which cannot be corrected by amendment
  - ➢ See next slide

Other Nuggets

- Standard of review is abuse of discretion for trial court's rulings on motions under Code Civ. Proc., 473. (*Tobias* at 1035.)
- Judgment creditor may renew a judgment upon application. (Code Civ. Proc., 683.120.)

Estate of Douglas (2022) 83 Cal.App.5th 690.

Error, mistake, or omission

Clerical Error

- Error was made in recording the judgment rendered
- Not the result of the exercise of the judicial function
- The result of inadvertence, but for which a different judgment would have been rendered
- Correct judgment or order to reflect "the true facts"
- Court has inherent power to correct

Judicial Error

- Error was made in rendering the judgment
- Exercise of judicial discretion, judicial reasoning, or judicial determination connected to this application.
- Cannot be corrected by amendment of judgment or order

Any attempt by a court, under the guise of correcting clerical error, to revise its deliberately exercised judicial discretion is not permitted

Estate of Douglas (2022) 83 Cal.App.5th 690.

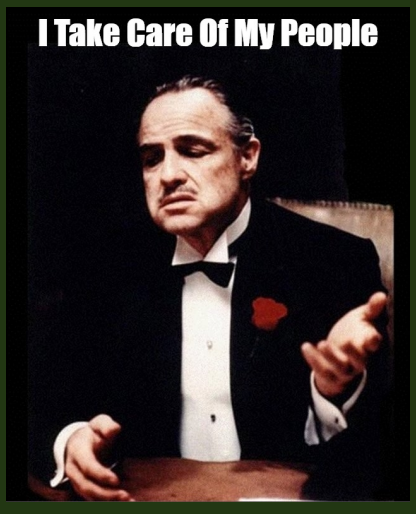
Analysis

- Error here was clerical, not judicial
- Original judgment identified judgment debtor as Audrey in her capacity as administrator
- Respondent did not apply to the court to change or alter that judgment in any way
- Respondent applied to the court to renew that existing judgment, but failed to include the capacity of the judgment debtor
  - No new or separate judgment
  - Merely extended time in which original judgment could be enforced
- The clerk's entry of the renewal based on that application was ministerial, not judicial
- No exercise of judicial discretion, judicial reasoning, or judicial determination connected to this application.

Conclusion

- Affirmed. Trial court did not abuse its discretion in determining this was a clerical error.

Estate of Douglas (2022) 83 Cal.App.5th 690.



Moral of the story

- When submitting orders, confirm who **and** in what capacity
  - *Joe Bob as trustee*
  - *Reemus as an individual*
  - *Eugenia as personal representative and individually*

Meiri v. Shamtoubi (2022) 81 Cal.App.5th 606.

**"If I could turn back time,
If I could find a way
[to contest this trust]"**

Meiri v. Shamtoubi (2022) 81 Cal.App.5th 606.

Holding

Beneficiary's untimely litigation was a direct contest without probable cause. The lower court, therefore, properly applied the trust's no contest clause to her.

Meiri v. Shamtoubi (2022) 81 Cal.App.5th 606.

Facts

- Beneficiary of subtrust filed petition to invalidate trust restatement based on lack of capacity, undue influence, and fraud.
- Trustee filed petition for instructions as to whether beneficiary's petition violated the trust's no contest clause.
- 16061.7 notice had 120-day deadline to contest the trust that beneficiary had blown by the time petitioned.
- Trustee's counsel warned beneficiary their petition was untimely and could be demurred, but beneficiary ignored.
- Trustee demurred.
- Judge May/Probate Court sustained demurrer without leave to amend. Found that beneficiary had filed a direct contest without probable cause because the petition was time-barred. Accordingly, beneficiary's petition violated the no contest clause. Beneficiary was thus disinherited from the trust.
- Beneficiary appealed, stating that an untimely contest did not establish lack of probable cause needed to enforce a no contest clause pursuant to Prob. Code, 21311. Court of appeal disagreed with reasoning.
- Affirmed.

Meiri v. Shamtoubi (2022) 81 Cal.App.5th 606.

Authority

- No contest clause is enforceable against a direct contest that is brought without probable cause.
  - Contest is a pleading filed with the court by a beneficiary that would result in a penalty under a no contest clause, if the no contest clause is enforced.
  - Direct contest alleges the invalidity of a protected instrument [trust] or one or more of its terms based on one or more of certain enumerated grounds including lack of capacity, menace, duress, fraud, or undue influence.
  - Probable Cause exists where at the time of filing a contest, the facts known to the contestant would cause a reasonable person to believe that there is a reasonable likelihood that the requested relief will be granted after an opportunity for further investigation and discovery.
- Prob. Code, 21310 et seq.
- *Key v. Tyler* (2019) 34 Cal.App.5th 505, 517.
- Standard of review is *de novo* for a court's application of a NCC when no disputed facts

Meiri v. Shamtoubi (2022) 81 Cal.App.5th 606.

Analysis

- The beneficiary's petition was a direct contest.
  - Beneficiary's challenge to the validity of the restatement fell within the trust's NCC and Prob. Code, 21311
- The untimeliness of the filing established a lack of probable cause
  - Beneficiary argued that any court assessing probable cause must look to the substance in the matter, rather than procedural impediments to the relief.
    - See Prob. Code, 21311, subd. (b) [in a probable cause inquiry, "the requested relief will be granted after an opportunity for further investigation or discovery"].
  - Court of appeal said that argument cut against beneficiary.
    - The Law Revision Commission's comments expressly distinguished the allegations' substance from the ultimate legal outcome. In proposing amendments to the statute, the Commission emphasized that the "granting of relief . . . Requires not only the proof of factual contentions but also a legally sufficient ground for the requested relief."
    - "Thus, any legally sufficient bar to relief—whether procedural (e.g. a statute of limitations defect) or substantive—appears to satisfy section 21311, subdivision (b)'s test."

Conclusion

- Untimely petition was a direct contest without probable cause; therefore, beneficiary violated the no contest clause and court of appeal affirmed the trial court's ruling that the beneficiary was thus disinherited.

Wehsener v. Jernigan (2022) 86 Cal.App.5th 1311.

"Hoosier daddy!"

Wehsener v. Jernigan (2022) 86 Cal.App.5th 1311.

Holding:

California law applies to determine parentage when a person claims to be an heir of an intestate decedent who was domiciled in California when he or she died, even if, as in the instant case, the parent and child relationship was effectuated outside California.

Wehsener v. Jernigan (2022) 86 Cal.App.5th 1311.

Facts

- Loch, the Decedent, died in 2018 while domiciled in San Diego
- Loch was only survived by issue of grandparents
- Shannon is first cousin on paternal side
- Shannon is sole person entitled to share in any portion of the estate passing by intestacy as issue of the Decedent's paternal grandparents
- Charles was adopted brother of Decedent's mother, Clare
- Charles and his wife took in Judy at two years old and she continued to live there for the duration of her childhood; they openly held her out as their daughter
  - Judy was not Charles's biological child, nor was she legally adopted by him
  - Charles was domiciled in Indiana when he died; took in Judy when domiciled in Kentucky
- Issue: Whether Judy is an intestate heir of Loch to share estate with Shannon

Wehsener v. Jernigan (2022) 86 Cal.App.5th 1311.

Procedural History

- Shannon filed petition for probate (letters administration/intestate), appointed as administrator with full IAEA
- Shannon filed petition for first and final report and waiver of account, claiming that she was Loch's sole heir entitled to distribution
- Judy objected, claiming that she qualified as an heir of the decedent as the natural child of Charles
  - Charles was brother of Clare, decedent's mother
  - Clare and Charles were children of Decedent's maternal grandparents
  - Accordingly, Judy was issue of Decedent's maternal grandparents
  - Therefore, Judy, through Charles, was entitled to ½ of Decedent's estate

Wehsener v. Jernigan (2022) 86 Cal.App.5th 1311.

Authority

- Prob. Code, 6450 et seq. – rules for determining who is a "natural parent" for purposes of intestate succession
  - Includes a presumed parent-child relationship under the UPA
  - A natural parent and child relationship is established where the relationship is presumed under the UPA and not rebutted.
    - Parentage is established by clear and convincing evidence that the parent has openly held out the child as that parent's own.
- Fam. Code, 7600 et seq. – UPA – Uniform Parentage Act
  - A person is presumed the natural parent of a child if the presumed parent receives the child into their home and openly holds out the child as their natural child. The presumption affects the burden of proof and is rebuttable by clear and convincing evidence.
- *Estate of Bassi* (1965) 234 Cal.App.2d 529.
  - "Extraterritorial effect" of California law in resolving questions of inheritance.
    - Old, underlying Cal. S.Ct. cases stated law and policy of CA encouraged legitimation of a child.
    - Although authorities date back more than 100 years, today remain good law and factually on point.
  - California has "the power and right . . . To determine the persons entitled to inherit property under its jurisdiction and to the extent and manner in which that power has been exercised."
  - Paraphrase of *Bassi* facts/holding: Once someone acknowledges a child as their own, and they openly live together as a family, no matter where that is, a parent-child relationship is created between them. If the relationship is not disavowed, the child is entitled to inherit through their parent in the line of that parent's relatives.

Wehsener v. Jernigan (2022) 86 Cal.App.5th 1311.

Analysis

- Shannon "wisely concedes the undisputed facts establish by 'clear and convincing evidence' that, for purposes of intestate succession, Charles received Judy into his home and openly held her out as his natural child," and never disavowed that relationship.
- "Shannon proffered *no facts*, and thus impliedly concedes there are none, to rebut the presumption of natural parenthood between Charles and Judy under the UPA."
- Only clear and convincing "evidence" rebuts the presumption.
- Only if two conflicting presumptions (under FC and PC) does *public policy* matter (Fam. Code, 7612); here, no; facts/one presumption.
- CA has "strong social policy" of preserving the parent and child relationship.

Conclusion:

- A California probate Court will apply this state's laws in determining whether a legally cognizable parent and child relationship exists as a condition to an heirship claim.
- It is immaterial whether another state or country, applying its own laws, would not recognize the existence of such a relationship effectuated in that state or country.
- No facts rebutted the presumption of natural parenthood between Charles and Judy, and even though unnecessary, policy supports the conclusion.
- Judy was natural child of Charles and thus an heir of Loch; Judy entitled to share of Loch's estate via intestate succession.

Estate of Wardani (2022) 82 Cal.App.5th 870.

"I want to be Americano"

Estate of Wardani (2022) 82 Cal.App.5th 870.

Holding

Probate court did not abuse its discretion in removing an intestate estate's administrator who was ineligible to serve based on finding that she was not a U.S. resident as required by Prob. Code, 8402, subd. (a)(4). Administrator did not actually live in the U.S. and was merely present temporarily; U.S. residency is not established by mere connections alone.

Estate of Wardani (2022) 82 Cal.App.5th 870.

Facts

- Husband, wife, husband's daughter from prior marriage.
- Husband dies. Wife petitions for probate. Wife checks the box stating that she is a U.S. resident with a P.O. box address in CA. Wife is appointed as administrator. (Intestate)
- Husband and wife had sold CA home and moved to Mexico, intending to retire there; lived there "full time" until husband died.
- Wife returned to CA for visits thereafter.
- Wife didn't plan to move back to U.S. until probate over.
- Court found that wife was not U.S. resident to act as administrator.
- Wife appealed. Court of appeal affirmed.

Estate of Wardani (2022) 82 Cal.App.5th 870.

Authority

- Prob. Code, 8402, subd. (a)(4) requires an administrator to be a resident of the United States to be eligible to serve.
  - "A person is not competent to act as a personal representative . . . [if] [t]he person is not a resident of the United States."

Analysis

- Wife's arguments:
  - California ties, and "double life in San Diego."
  - Residency vs. domicile usage.
- Court of appeal found that, under either construction (residency/domicile), preponderance of the evidence that wife was not a CA resident.
  - Never lived where P.O. box address was, as stated on probate petition.
  - Moved to Mexico and planned to retire there.
  - Merely visited U.S. on a temporary basis without ever residing in U.S.
  - Did not "*actually live* in the U.S."; "connections to this country cannot alone establish residency."
- Also, wife's credibility of wife ~questionable~

Conclusion

- ¡Adios, appellant!

Chui v. Chui (2022) 75 Cal.App.5th 873.

"Court Slay as *Parens Patriae*"

Chui v. Chui (2022) 75 Cal.App.5th 873.

Holdings:

Court properly approved a settlement agreement entered by a GAL on behalf of minors, despite the mother's and minors' repudiations of that agreement.

Settlement agreement was not unconscionable.

Court properly did not remove GAL, and appointment in one case carried through to other related cases on same foundation that GAL's purpose is to aid the court in its function as guardian of minors.

Chui v. Chui (2022) 75 Cal.App.5th 873.

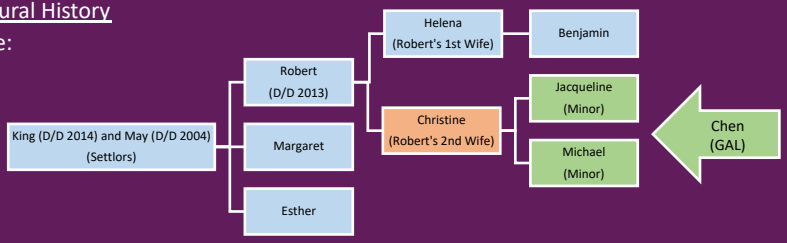
Overview

- Messy trust litigation
- 2 minors
- GAL appointed for 2 minors
- Mother of minors was most contentious litigant
- GAL requested approval of a settlement agreement
- Mother tried to step in, 2 minors (supposedly) tried to step in, to repudiate the settlement agreement, on behalf of the minors and over the GAL
- Judge May/Probate Court said no
- Affirmed

Chui v. Chui (2022) 75 Cal.App.5th 873.

Facts/Procedural History

- Family Tree:



- Settlors were Trustees; after May died, King alone; after King became incapacitated, Robert and Margaret; after Robert became incapacitated, Benjamin and Margaret; Robert died.
- Trust Litigation
  - Esther filed petition against Robert and Margaret. Requested appointment of GAL for minors. Amended petition to add Christine. Also filed an 850 petition against Benjamin and Margaret.
  - Benjamin and Margaret filed a petition against Robert's estate for breach/surcharge. Benjamin filed 850 petition.
  - Christine filed petitions to remove Benjamin and Margaret. Benjamin moved to strike (anti-SLAPP), which Court denied.
  - Margaret joined Benjamin's 850 petition. Margaret and Benjamin amended 850 petition.
  - Ester filed amended petition, alleging King's incapacity/UI, sought orders including that Christine predeceased King per PC 259.
  - In addition, 5 other related Probate Court cases.
  - Court appointed Chen as GAL of 2 minors in one case.
  - Court appointed Christine of guardian of estates of her 2 minor children and GAL in one case.

Chui v. Chui (2022) 75 Cal.App.5th 873.

Procedural History (cont'd)

- Settlement
  - Trust Litigation Trial. Parties showed up and said had Settlement.
    - Settlement between Christine, Benjamin, Margaret, and Esther.
    - GAL Chen not present, thus minors not represented at proceeding.
    - Christine's counsel recited terms on the record. Benjamin had other "nonmaterial terms" onto record.
    - Court asked, and all parties present said, heard and understood the agreement, spoke with their lawyers, and agreed to the terms.
    - Court concluded settlement "subject to" the agreement of Mr. Chen o/b/o minors.
    - When Benjamin went to read the other nonmaterial terms onto the record, on her own accord, Christine and her counsel left.
  - Christine filed motion to set aside settlement because of drugs and ill. She said the agreement was unconscionable. Court DWOP for procedural defect.
  - Chen drafted up the settlement agreement and said he did not believe it was in the best interests of the minors and wouldn't sign.
- 1st GAL Agreement
  - Chen then made another settlement ("1st GAL Agreement"), which Christine did not sign.
  - Benjamin and Margaret filed a motion to enforce the settlement, Chen said 1st GAL Agreement didn't affect. Christine opposed. Hearing. Court rejected Christine's opposition and said the settlement remained subject to Court approval of the Minors' compromise."
    - Court noted in order that Chen was appointed as GAL in one case, but parties stip'd related cases would be tried together. Court understood Chen to be GAL in all related cases.
  - Christine filed motion for reconsideration and then a motion to vacate the order enforcing the agreement. Court denied both. Christine filed petition to set aside settlement and appoint herself as trustee and GAL. Court granted Benjamin's anti-SLAPP motion and dismissed the petition.
  - Court entered order enforcing settlement.
  - Chen filed petition to approve 1st GAL Agreement. Trial. Court denied Christine's motion for nonsuit/judgment. Court found that Chen had not proven the 1st GAL Agreement was in the minors' best interests. Court issued OSC re: removal of Benjamin and Margaret as Cotrustees.
  - More motions.
- 2nd GAL Agreement
  - Mediation of Benjamin, Margaret, Chen, and Christine. Everyone but Christine agreed (2nd GAL Agreement"). Status conference, motions.
- Repudiations of Settlement and 1st GAL Agreement
  - Christine filed/amended/supplemented notices of repudiation of settlement agreement and of 1st GAL agreement in her capacity as parent and guardian of the minors and as GAL of the minors w/ respect to the one case number. She said that the other terms recited after she left the courtroom resulted in material prejudice to the minors.
  - Minors then filed unverified notices of repudiation and declarations to repudiate the settlement and 1st GAL agreement as not in their best interests. (Stricken as unverified, resubmitted verified.)
  - Cotrustees opposed Christine's repudiation on the basis of lack of standing because Chen was GAL and Christine waived rights to represent minors in the Settlement.

Chui v. Chui (2022) 75 Cal.App.5th 873.

Procedural History (cont'd)

- Consolidated Rulings
  - Chen filed petition to approve 2nd GAL Agreement. Also filed petition to remove Christine as Minors' GAL in all related cases and have Chen appointed as GAL.
    - Christine demurred. Oral argument.
  - Court issued consolidated ruling.
    - Overruled Christine's demurrers.
      - Rejected reliance on the repudiations. "Although a parent would generally have the right to object or repudiate, she is precluded from doing so here because her objection is inconsistent with the Minors' interest." Plus, Christine had waived right to bring claims for minors in the prior Settlement.
    - DWOP Christine's petition for removal of Chen as GAL
    - Discharged OSC re: removal of Benjamin and Margaret as Cotrustees
    - In the ruling stated:
      - Cotrustees and Christine lacked standing to challenge Chen's petition for approval of 2nd GAL Agreement.
        - Court: "Proceedings on a GAL's petition for approval are fundamentally between the minors, the GAL, and the Court—and nobody else."
      - Denied request for evidentiary hearing because petition for approval is generally non-adversarial in nature.
      - Court noted 2nd GAL Agreement provided substantially better terms for the minors.
    - Court approved 2nd GAL Agreement.
- Christine filed motion for new trial (denied) and motion for reconsideration (granted, reconsidered, still denied).
  - Order approving 2nd GAL Agreement, appointing Chen as GAL of minors in cases, DWOP Christine's petition to remove Chen as GAL, and discharging OSC re: removal of the cotrustees.
- Christine and Minors (Jacqueline and Michael) each filed appeals. Chen filed notice to dismiss appeals, which was denied. Court of appeal opined.
- Affirmed

Chui v. Chui (2022) 75 Cal.App.5th 873.

*Opinion has several published and unpublished sections. Only published is in these slides

Appeal Issues: *Did Probate Court err in:*

- Granting the cotrustees' motion to enforce the settlement agreement because it was unconscionable?
- Approving 2nd GAL Agreement?
  - What about Christine's repudiations?
  - What about the Minors' repudiations?
- Denying Christine's petition to remove Chen as GAL?
- Answer to all: "No error."

Chui v. Chui (2022) 75 Cal.App.5th 873.

Legal Discussion

- Unconscionability
  - Principles:
    - Unconscionability doctrine ensures contracts do not impose terms that are overly harsh, unduly oppressive, so one-sided as to shock the conscience, or unfairly one-sided.
    - Two elements: procedure (bargaining) and substance (outcome).
    - *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 910-911.
  - Application:
    - Settlement not unconscionable because Christine was in Court, said she heard, understood, and agreed to the terms recited by her counsel, and she was represented by three attorneys from different law firms.
    - Probate Court correctly stated that unconscionability was a heavy burden – not enough for Christine to assert she may have prevailed, but rather the settlement terms shock the conscience.
    - Christine tried to argue that the settlement left her worse off than if she had lost the case and been deemed predeceased under Prob. Code, 259. Court of appeal explained that Christine misunderstood the application of Section 259.
      - Prob. Code, 259, in a nutshell, here: a person who is liable for physical or financial abuse or neglect of a decedent will be deemed to have predeceased the decedent; a person who is held so liable shall not receive any property, damages, or costs *that are awarded to the decedent's estate* in an action for such abuse or neglect.
      - 259 means that a person is deemed to have predeceased the decedent only to the extent the person would have been entitled through a will, trust, or laws of intestacy to receive a distribution of the damages and costs the person is found to be liable to pay to the estate as a result of the abuse.
      - 259 does not necessarily eliminate the abuser's entitlement to a share of the estate; it simply restricts the value of the estate to which the abuser's percentage share is applied and prevents that person from benefiting from his or her own wrongful conduct.
      - *Estate of Dito* (2011) 198 Cal.App.4th 791, 803-804.

Chui v. Chui (2022) 75 Cal.App.5th 873.

Legal Discussion

- GAL
  - Principles:
    - Prob. Code, 1003. The court is not *required* to appoint GAL for minors in proceedings, but the court "*may*" *sua sponte* or on request of an interested person appoint a GAL for a minor "if the court determines that representation of the interest otherwise would be inadequate." (i.e., discretion of the court.)
    - In absence of a GAL, "the court is 'the guardian of the minor,' and the guardian ad litem is appointed, if at all ''merely to aid and to enable the court to perform that duty of protection.''"
  - Application:
    - Christine argues the minors were pro pers before appointment of a GAL.
    - Court of Appeal said no. "[T]he fact that a guardian ad litem had not been appointed for the minors in particular probate proceedings does not mean that the minors were representing themselves."
    - No import that Chen as GAL was appointed in some cases but in others. "[H]e negotiated an agreement ostensibly to aid the court in its duty of protecting the Minors' interests." This carried through to all the proceedings. Also, Chen provided aid to the probate court.

Chui v. Chui (2022) 75 Cal.App.5th 873.

Legal Discussion

- Repudiations
  - Principles:
    - With respect to minors, the court is, in effect, the guardian, and the GAL's actions are subject to court supervision. [Citations.]
    - Under such supervision, the court may "rescind" a GAL's actions that are "inimical to the legitimate interests of the ward." [Citations.]
      - Thus, the court could reject a GAL's repudiation of an agreement if the court determines the repudiation is "adverse to the best interests of the minors."
        - *Scruton v. Korean Air Lines Co.* (1995) 39 Cal.App.4th 1596, 1607.
      - The same principles apply to a parent of a minor. Because the court has the responsibility to protect the rights of a minor who is a litigant in court, it has the inherent authority to make decisions in the best interests of the child, *even if the parent objects*.

Chui v. Chui (2022) 75 Cal.App.5th 873.

Legal Discussion

- Application:
  - Christine's Repudiation
    - Probate Court stated Christine would ordinarily have a right to object or repudiate agreements made by her children, but "she is precluded from doing so here because her objection is inconsistent with the Minors' interests."
    - The scope of Chen's appointment as GAL warrants greater deference to his view over Christine's.
    - More importantly, the probate court found that Christine had a conflict of interest with the Minors. No abuse of discretion and substantial evidence for this finding.
      - Even if no conflict of interest and repudiations entitled to some deference, Court could reject if "adverse to the best interests of the minors."
  - Minors' Repudiations
    - Minors rely on general principle that "a contract of a minor may be disaffirmed by the minor before majority or within a reasonable time after . . . except as otherwise provided by statute." (Fam. Code, 6710.)
      - This rule exists to protect minors "against their own improvidence and the designs of others. . . ."
      - Such principle typically applied to disaffirm minors' deeds of trust; here, however, attempting to disaffirm a settlement agreement made by the GAL subject to Court approval.
    - Proviso "except as otherwise provided by statute." (Fam. Code, 6710.) See Code Civ. Proc., 372, subd. (a)(1) re: court-appointed GAL.
    - "To allow a minor to disaffirm a contract negotiated by the GAL would negate this authority."
    - This exception is also supported by sound policy – general rule of protecting minors against their own improvidence and the design of others accommodated by the requirement that the court must approve the agreement reached by the GAL.

Chui v. Chui (2022) 75 Cal.App.5th 873.

Conclusions

- Agreement was not procedurally or substantively unconscionable.
- That GAL was not appointed in all cases in which the agreement affected the minor's rights did not mean that the minors were representing themselves, which would have precluded the court from approving the agreement.
- Christine would have had deference to her repudiation of the agreement, however, she had a conflict of interest that precluded such here.
- Minors' repudiation fell within the "except as otherwise provided by statute" exception to the rule that allows minors to disaffirm a contract before reaching the age of majority.
- GAL did not have a conflict of interest that required removing him as minors' guardian ad litem in proceedings concerning the trust.

Estate of Jones (2022) 82 Cal.App.5th 948.

"For every contract, term, term, term"

Estate of Jones (2022) 82 Cal.App.5th 948.

Summary

- Decedent's former wife settled claims with trustee of decedent's trust in a stipulated judgment.
  - Terms of stipulated judgment:
    - Trust shall pay her $3 million as settlement of claims.
    - The $3 million shall be paid out of escrow from the sale of a real property.
  - Escrow fell through. Trustee never paid wife's $3 million.
  - Wife petitioned to enforce the stipulated judgment.
  - Probate court found that the collapse of the sale voided the promise to pay (condition precedent).
  - Wife appealed.
- Reversed and remanded.
  - Contract principles apply in interpreting stipulated judgments.
  - Not a condition precedent. Two separate sentences; two independent promises. No link between the sentences; no contingency.
    - First sentence obligates to pay.
    - Second sentence says method of payment.
    - Independent promise to pay $3m is enforceable and remains payable upon the real property's sale. (whenever that may be)
  - Binding, enforceable agreement.
  - "We remand for the court to exercise its inherent authority to enforce the stipulated judgment, including, where appropriate, making determinations regarding breach and excuse from performance."

Estate of Eskra (2022) 78 Cal.App.5th 209.

"Check your escrite before you escribe the prenup"

Estate of Eskra (2022) 78 Cal.App.5th 209.

Summary

- Wife petitioned for probate of husband's estate, seeking appointment as personal representative.
- Probate Court denied petition based on premarital agreement that waived wife's interests in husband's separate property.
- Wife appealed.
- Reversed and remanded. Wife was entitled to introduce extrinsic evidence in support of her argument that she and her late husband mistakenly believed the agreement would apply only in the event of divorce, rather than upon death.
- On remand, probate court denied the petition. It found that the mistake was unilateral on the part of the wife, and accordingly, she was not entitled to recission. Also, mistake of fact, not law.
- Wife appealed.
- Affirmed. Because wife failed to read the agreement and meet with her attorney to discuss it before signing it, she bore the risk of her mistake and is not entitled to rescission.

White v. Davis (2023) 87 Cal.App.5th 270.

"The Nefarious B.I.G."

White v. Davis (2023) 87 Cal.App.5th 270.

Holding

Where the trustee applied for an elder abuse restraining order, and the defendants responded with an anti-SLAPP motion, the court properly denied the anti-SLAPP motion but abused its discretion by declining to hear the EARO until after the anti-SLAPP motion.

White v. Davis (2023) 87 Cal.App.5th 270.

Facts

- Thomas had $40 million estate.
- Thomas had 3 daughters with first wife. After she died, Thomas married second wife (also wealthy) who had two daughters; prenuptial and postnuptial agreements made by Thomas's estate planning attorney, Mitchell.
- Thomas appointed his 3 daughters as attorneys in fact, and then, successor cotrustees (once he resigned).
- 24 days after he resigned, Thomas signed an amendment, drafted by Mitchell, which made the living trust irrevocable and unmodifiable without the written consent of Thomas and his daughters.
- No issues re: Thomas favoring his biological heirs during the first 6 years of his second marriage. Thomas later became intellectually impaired and susceptible to being unduly influenced. He fired Mitchell, since his new wife was interfering with their relationship.
- Thomas's daughter/cotrustee filed a petition for appointment of conservator of Thomas's person and estate. GAL appointed with authority to investigate, retain, and discharge counsel for Thomas's protection.
- New wife and one of her daughters continuously tried to influence Thomas to change his estate plan by isolating him from his biological family.

White v. Davis (2023) 87 Cal.App.5th 270.

Procedural History

Conservatorship

- Thomas's daughter/cotrustee filed a petition for appointment of conservator of Thomas's person and estate. GAL appointed with authority to investigate, retain, and discharge counsel for Thomas's protection.
- Undue influence continued.

Restraining Orders

- Thomas's daughter applied for a restraining order against new wife's daughter on the basis of scheming to sabotage Thomas's relationship with his daughters, remove his daughters as cotrustees, and amend his trust.
- Court issued TRO against new wife's daughter. No hearing, however, because she would not accept service.

Conservatorship (cont'd.)

- GAL relieved. Contested trial. Probate Court determined a temporary conservator of Thomas's estate was necessary because Thomas was mentally deficient and very susceptible to being unduly influence. Thereafter, parties stipulated to a general conservator of the estate. The court appointed independent counsel for Thomas.
- All the meanwhile, new wife's daughter was up to no good in trying to in/directly influence the conservatee.

New Litigation

- New wife and her daughters filed civil actions (not authorized), sought appointment of a GAL for Thomas, engaged a law firm, and petitioned for termination of the conservatorship. They also interfered with Thomas's CAC who then resigned.
- Judge Reva Goetz sat in on family meeting and stated that he did not know the names of his privately-retained attorneys, did not remember signing engagement letter with the firm, and his attorneys had not told him anything about the case.
- Conservator filed petition for instructions barring any counsel not appointed by the Court. Court granted. Appeal. Affirmed.
- Despite decision, new wife, her daughters, and private attorneys continued to interject/unduly influence Thomas.
  - Created a purported amendment to the living trust, signed without notice or approval of conservator, probate court, or cotrustees.

White v. Davis (2023) 87 Cal.App.5th 270.

Procedural History (cont'd)

Petitions for EAROs

- Thomas's daughter, as cotrustee, filed applications for EARO's against each of the defendants based on their continued efforts to unduly influence Thomas to change his estate plan to their benefit.
  - Defendants: new wife and her daughters and the legal team they had put in place for Thomas (privately-retained attorneys for Thomas, Marshall (EP atty), new GAL that they sought for appointment, and a paralegal).
- Probate court denied the applications for temporary EAROs pending a hearing on the merits.

Anti-SLAPPs

- Prior to hearing on the EAROs, defendants filed 6 anti-SLAPP motions
  - Alleged EAROs arise from protected activities involving the exercise of constitutionally protected rights of petition and to freedom of speech and improperly seeking to interfere and adjudicate issues raised in a different county's court case.
- Cotrustee filed 6 oppositions. Urged the probate court to hearing the anti-SLAPP motions together with the applications for EAROs. Probate court said no.
- Probate court proceeded with the hearing on the merits of the anti-SLAPP motions.
- Probate court denied all of the anti-SLAPP motions, finding "nothing here involves a protected activity," and that the litigation activity was not the basis of the liability – the evidence of undue influence and isolating of Thomas was.

- Defendants appealed.

White v. Davis (2023) 87 Cal.App.5th 270.

Authority

- Standing to file EAROs
  - (1) An elder or dependent adult who has suffered abuse, as defined in Section 15610.07, may seek protective orders as provided in this section. (2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult. (Welf. & Inst, 15657.03, subds. (a)(1)-(a)(2).)
- Anti-SLAPP (Code Civ. Proc., 425.16)
  - *Gaynor v. Bulen* (2018) 19 Cal.App.5th 864, 876.
- Recent amendment to Prob. Code, 1471 [conservatee's right to independent counsel]
  - "[A]n attorney who cannot provide zealous advocacy or *who has any conflict of interest with respect to the representation of the conservatee*, proposed conservatee, or person alleged to lack legal capacity *shall be disqualified*." (Prob. Code, 1471, subd. (d).)
- Decision about when to hear petitions, like all rulings implicating how a court manages its courtroom calendar and docket, is reviewed for abuse of discretion.

White v. Davis (2023) 87 Cal.App.5th 270.

Analysis

- Standing: Thomas's daughter, as cotrustee, had standing to apply for EAROs on behalf of Thomas.
  - Basis: defendants did and continue to participate in actions to unduly influence Thomas to change his estate plan for their benefit.
- *"[D]efendants' litigation activities merely evidence their nefarious actions to control Thomas through isolation, confusion, and mental suffering designed to overcome his free* will."
  - "In sum, [the] applications for EAROs do not arise out of defendants' protected activity, but out of their actions to unduly influence Thomas regarding his decades-long estate plan." Defendants thus failed to meet their burden with respect to the first step of the anti-SLAPP analysis.
- Probate court correctly relied on the prior appellate decisions/findings made in this case.
- Nothing in new Prob. Code, 1471 overrules appellate court's prior decision re: conflict of interest.
- Court of appeal concluded there was substantial evidence of undue influence.
- Abuse of discretion to hear anti-SLAPP's before the EAROs (not after or with them). The anti-SLAPP motions interfered with the EARO proceedings because the probate court never issued temporary EAROs to protect Thomas

Conclusion

- Anti-SLAPP motions correctly denied.

White v. Davis (2023) 87 Cal.App.5th 270.

Conclusions

- Affirm order denying each special motion to strike.
- Remanded for trial court to proceed to trial on applications for EAROs
  - Trial court abused its discretion in failing to utilize its case management tools and prevent a delay in hearing the merits of the applications for EAROs
    - Failed to revisit the prior denial of temporary EAROs and grant temporary relief pending the resolution of defendants' anti-SLAPP motions
    - Failed to decide the applications and the anti-SLAPP motions at the same time.

White v. Davis (2023) 87 Cal.App.5th 270.

Lessons:

- Hear EARO's – don't delay for other proceedings
- Undue influence (i.e., the litigation nefariously arising therefrom) is not a protected activity for anti-SLAPP
- Under new Prob. Code, 1472, conservatee's attorney must be a zealous advocate free from conflicts of interest (e.g., hired by undue influencer)
- Standing for EARO belongs to a trustee or conservator of an elder

White v. Wear (2022) 76 Cal.App.5th 24.

"Hero got an EARO based on FEA claims"

White v. Wear (2022) 76 Cal.App.5th 24.

Summary

- In issuing an elder abuse restraining order, the probate court erred in including a firearms and ammunition restriction because there were no physically abusive or mentally intimidating acts against the conservatee
- Defendant's *post-hoc* peremptory challenge of probate court judge (Code Civ. Proc., 170.6) did not void the EARO.
- Petitioner's petition stated a cause of action for financial abuse under EADACPA (Elder Abuse and Dependent Adult Civil Protection Act)
  - Defendant procured, or assisted in procuring, a purported amendment to the conservatee's living trust.
    - Supported claim for FEA sufficient to warrant an EARO.

Balistreri v. Balistreri (2022) 75 Cal.App.5th 511.

"Follow the recipe to modify or revoke a trust"

Balistreri v. Balistreri (2022) 75 Cal.App.5th 511.

Holding:

"[W]hen a trust specifies a method of amendment — regardless of whether the method of amendment is exclusive or permissive, and regardless of whether the trust provides for identical or different methods of amendment and revocation — section 15402 provides no basis for validating an amendment that as not executed in compliance with that method."

Note: petition for review granted, pending in S273909.

Balistreri v. Balistreri (2022) 75 Cal.App.5th 511.

Facts:

- Husband, wife, daughter. H&W create trust.
- Trust states that "[a]ny amendment, revocation, or termination . . . shall be made by written instrument signed, with signature acknowledged by a notary public, by the trustor(s) making the revocation, amendment, or termination, and delivered to the trustee."
- H&W sign trust amendment; H dies next day. Amendment is not notarized.
- W petitions to construe validity of amendment.
- Probate Court concludes that amendment is invalid because not notarized, pursuant to Prob. Code, 15402.

Procedural Posture:

- Court of appeal affirmed.
- One concurring justice.
- Petition for review granted.

Balistreri v. Balistreri (2022) 75 Cal.App.5th 511.

Authority:

- Prob. Code, 15401 Trust Revocation
  - (a) – A trust may be revoked by compliance with any method of revocation provided in the trust instrument. OR
  - (b) – A trust may be revoked in a writing, other than a will, signed by the settlor, and delivered to the trustee during the lifetime of the settlor.
  - BUT if the trust instrument explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation, that method must be used.
    - Trust must contain an explicit statement that the trust's revocation method is exclusive.
- Prob. Code, 15402 Trust Modification
  - *Unless the trust instrument provides otherwise*, if a trust is revocable by the settlor, the settlor may modify the trust by the procedure for revocation.
  - When the trust instrument is silent on modification, the trust may be modified in the same manner in which it could be revoked, either per statute or as stated in the trust.
- Thus, when a trust specifies an amendment procedure, a purported amendment made in contravention of that procedure is invalid.
- Supporting cases:
  - *Brown v. Labow* (2007) 157 Cal.App.4th 795, 812 [paramount rule in construing a trust instrument is to determine intent from the instrument itself and in accordance with applicable law]
  - *Pena v. Dey* (2019) 39 Cal.App.5th 546, 551 [trust amendment must follow procedure in trust if specified]
  - *King v. Lynch* (2012) 204 Cal.App.4th 1186, 1192 [15402's qualification "unless the trust instrument provides otherwise" indicates that if any modification method is specified in the trust, that method must be used to amend the trust]

Balistreri v. Balistreri (2022) 75 Cal.App.5th 511.

Analysis

- Here, trust requires amendment to be notarized.
- Specific method of amendment in trust.
- Settlors intended to bind themselves to that method.
- They had used that method in the original trust and in prior amendments and revocations.
- "[T]hey were not entitled to cast aside that procedure and amend the Trust using the revocation procedure set forth in section 15401, subdivision (a)(2)."
- Appellant contends that by jointly executing the amendment, she and husband/decedent expressed their intent to change the disposition of the property.
  - "But we cannot view the amendment in isolation. While an appellate court 'must construe a trust instrument, where possible, to give effect to the intent of the settlor, that intent 'must be ascertained from the whole of the trust instrument, not just separate parts of it.'"
  - The intent expressed in the Trust "stated explicitly [] its amendment provision" re: a valid amendment.

Conclusion

- Affirmed. Trust amendment is invalid because it is not notarized, per exclusive method stated in trust for modification.

Balistreri v. Balistreri (2022) 75 Cal.App.5th 511.

Why Review Granted?

- *Haggerty v. Thornton* (2021) 68 Cal.App.5th 1003, review granted 12/22/21, S271483
  - Reservation of rights provision stated settlor "may" amend or revoke the trust "by an acknowledged instrument in writing."
  - Settlor drafted and signed amendment, but not notarized.
  - Argument that amendment was invalid because not acknowledged per the trust agreement.
  - Court of appeal disagreed. It concluded settlor could amend the trust pursuant to the revocation procedure in Prob. Code, 15401.
    - Because the trust did not distinguish between revocation and modification, it did not "provide otherwise" than the general rule; thus, may modify trust by any valid method of revocation under 15402.
  - "Section 15402 cannot be read in a vacuum. It does not establish an independent rule regarding modification. It recognizes the existing principle that 'a power of revocation implies the power of modification.' The method of modification is therefore the same as the method of revocation, 'Unless the trust instrument provides otherwise.'"

Royals v. Lu (2022) 81 Cal.App.5th 328.

"Failure to Launch Attachment"

Royals v. Lu (2022) 81 Cal.App.5th 328.

Holding

Probate Court erred in issuing pretrial right to attach order which levied respondent's assets based on petitioner's unsubstantiated application for prospective compensatory and punitive/exemplary damages and statutory penalties.

Royals v. Lu (2022) 81 Cal.App.5th 328.

Facts/Procedural History

- Father (99), 2nd wife (59, dad married at 95), and daughter from 1st marriage (56 years wed until wife died)
- After married, encumbered R/P residence, sold vacation R/P, and deposited cash into accounts controlled by wife
- After father died, daughter trustee of trust
- Daughter petitions for return of trust assets, breach of spousal duty, and financial elder abuse
  - Claims damages $1,095,000 in misappropriated funds
  - Claims 859 double damages for double value of compensatory damages
  - Claims punitive damages trebled under Civ. Code, 3345, subd. (b)
- Concurrently, daughter files application for pretrial writ of attachment for $3,440,000
  - Judicial Council Form, checked a box, but otherwise, provided no evidentiary support for the requested amount or explanation of the amount sought.
- Wife objects to both; says daughter never accepted the marriage and saw it as a threat to her inheritance; provides 7 declarations from father's doctor, dentist, real estate broker, etc., and 32 exhibits
  - Daughter objected to the evidence, probate court never ruled on them, evidentiary showing uncontested on appeal
- Wife cross-petitions against daughter for financial elder abuse
  - Daughter demurs. Court sustains without leave to amend, with prejudice.
- Probate Court granted attachment, without explanation or indication of consideration of evidence.
  - After brief, unreported hearing, minute order stated only, "petition approved as prayed."
- Bank holding (now frozen) cash subject to attachment files interpleader. (Affirmed in first unpublished appeal)
- Wife appealed from order for attachment and other orders
- Reversed in part and affirmed in part

Royals v. Lu (2022) 81 Cal.App.5th 328.

Facts/Procedural History (cont'd)

- "In our opinion affirming the interpleader order . . . We left no doubt that, on the factual record presented . . . we view this case as one in which the facts are sharply contested, with an outcome in favor of [daughter] hardly foreordained. [Daughter] apparently took the hint."
  - 1 week after first appellate opinion, daughter applied ex parte to the probate court for an order vacating the attachment order.
    - Court granted vacatur
  - Daughter then moved the court of appeal to dismiss the appeal of the attachment order as moot.
    - Court of appeal denied the motion to dismiss.

Analysis of Vacatur

- Probate court's vacatur of the attachment order is a nullity.
- In general, timely filing of a notice of appeal vests jurisdiction in the appellate court and, subject to certain exceptions, terminates the lower court's jurisdiction.
  - As a result, the trial court has no jurisdiction to vacate, modify, or otherwise change an order that is the subject of a pending appeal.
  - Until remittitur issues, the lower court cannot act upon the reviewing court's decision (only one court has jurisdiction over one case at a time)
  - Once an appeal is perfected, an automatic stay goes into effect, preventing all further trial court proceedings that may undermine the effectiveness of the appeal, including enforcement of the judgment or order under review. (Code Civ. Proc., 916.)
    - The automatic stay specifically suspends the trial court's power to "enforce, vacate or modify" the appealed judgment or order while the appeal is pending
- "[T]his appeal is not moot." For 16 months, attachment order deprived wife of assets, without a trial.

Royals v. Lu (2022) 81 Cal.App.5th 328.

Authority

Elder Abuse Act's Interplay with Attachment Law

- **Elder Abuse Act**
  - Generally construed *broadly* in favor of *plaintiffs* seeking relief on behalf of elders
  - A remedial scheme designed to protect a vulnerable class of citizens
- **Attachment Law**
  - Generally construed *strictly* according to the letter of its statutory terms.
  - Harsh remedy that causes the *defendant* to lose control of their property
    - i.e. writ → levy (attached to Δ's assets)
  - An ancillary or provisional remedy to aid in the collection of a money demand by seizure of property in advance of trial and judgment

Comes together at Welf. & Inst. Code, 15657.01

Royals v. Lu (2022) 81 Cal.App.5th 328.

Authority

Attachment Law (Code Civ. Proc., 481.010 et seq.)

- Plaintiff must
  - Procedural Requirements
    - Meet the burden of showing plaintiff's claim has probable validity
      - More likely than not that the plaintiff will obtain a judgment against the defendant on that claim
  - Substantive Requirements
    - Affidavit or verified complaint stating that the attachment is sought to secure the recovery on a claim upon which an attachment may be issued; and
    - Together with a statement of the amount to be secured by the attachment.
      - Amount of Δ's indebtedness claimed by ∏ plus allowable costs and attorney's fees
        - Total amount of claim(s) must be a *fixed or readily ascertainable amount*
  - Remedy of attachment is generally limited to an action on claim(s) for money, each of which is based upon a contract.
    - Aid to civil enforcement of certain statutes
      - One of which is the Elder Abuse Act

Royals v. Lu (2022) 81 Cal.App.5th 328.

Authority

Elder Abuse Act (Welf. & Inst. Code, 15610 et seq.)

- Physical or Financial Abuse (of an elder over age 65)
- Remedies only available where the plaintiff proves by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse.
  - Punitive damages by clear and convincing evidence
  - Attorney's fees and costs: financial abuse by preponderance of the evidence; physical by clear and convincing

Attachment Law Meets Elder Abuse Act (Welf. & Inst. Code, 15657.01)

- Prejudgment attachment is a way to facilitate quick recovery of losses in financial abuse cases
- Purpose is to preserve the elder's assets wrongfully held by defendant until judgment rendered
- Must follow the attachment procedures set forth in Code Civ. Proc., 483.010 et seq. and meet the other consistent standards of the Elder Abuse Act

Royals v. Lu (2022) 81 Cal.App.5th 328.

Analysis

- Unclear what justified an amount of more than 3x actual damages that daughter pleaded on information and belief.
  - "The Court should award damages according to proof, but on information and belief at least $1,095,000."
- Court of Appeal concluded:
  - Some elements could support attachment on FEA claim (compensatory damages, attorneys' fees, and costs)
  - Some could not (punitive damages, statutory penalties under Code Civ. Proc., 3345 and Prob. Code, 859
  - BUT
    - Attachment request not supported and should have been rejected outright
      - Request failed to comply with 4 provisions of Attachment Law
        1. Application not supported by affidavit or verified complaint showing affirmatively, based on facts set forth with particularity, that the affiant, if sworn as a witness, can testify competently to the facts stated.
        2. Application did not include a statement of the amount to be secured by the attachment; failed to explain the figure requested, i.e., not a "fixed or readily ascertainable amount"
           → ***Notice principle; due process to Δ***
        3. Application did not present a statement showing that the attachment is sought to secure recovery on a claim upon which an attachment may be issued.
           → *Welf. & Inst. Code only authorizes an attachment in an action for damages; statutory penalties ≠ damages*
        4. Application did not state an amount to be secured based on the amount of the defendant's indebtedness claimed by the plaintiff.
           → *A demand for punitive damages is not a claim for indebtedness*

Royals v. Lu (2022) 81 Cal.App.5th 328.

Analysis

- Constitutional considerations
  - Due process problems
    - "On the less than fully developed record presented in summary attachment proceedings, it would pose too great a risk of arbitrary deprivation if trial courts were charged with projecting the likelihood of punitive damages recovery. There are too many nuances to the multipronged test governing punitive damages to expect that a provisional evaluation of that issue can be done in an accurate and reliable way in an attachment proceeding."
    - "While it is true that the Elder Abuse Act must be broadly construed in favor of elders, the paramount importance of ensuring that the Attachment Law conforms to due process standards must carry the day."
  - "Our reading of these two schemes together—permitting the attachment of well-supported claims for compensatory relief along with associated requests for attorney fees and costs, while rejecting the attachability of claims for punitive damages and statutory penalties—strikes an appropriate balance."

Conclusion

- Reverse order issuing writ of attachment and right to attach order
- Reverse order sustaining daughter's demurrer to claim in wife's cross-petition re: claim for financial elder abuse
- Otherwise affirm all orders from which the appeal was taken.

Parker v. Schwarcz (2022) 84 Cal.App.5th 418.

"Nacho records, my records"

Parker v. Schwarcz (2022) 84 Cal.App.5th 418.

Holding

Former temporary conservatee cannot use an 850 petition to request return of communications and documents from the administration of the temporary conservatorship.

Parker v. Schwarcz (2022) 84 Cal.App.5th 418.

Facts

- Probate Court terminated temporary conservatorship of Cynthia's estate
- Cynthia petitioned for return of property and for declaratory relief (850 petition)
- In petition, Cynthia requested all communications and documents (even attorney-client) concerning the administration of the conservatorship estate from former temporary conservator professional fiduciary.
- Probate Court held that 850 petition does not authorize such a request and denied declaratory relief
  - Said it reads more like a discovery request than an 850 petition
- Cynthia appealed.
- Affirmed. Cynthia's request for communications and documents from the administration of the temporary conservatorship is not the proper subject of an 850 petition.
- Underlying briefs left out discussion of declaratory relief claim
  - Therefore, so does the appellate decision.

Parker v. Schwarcz (2022) 84 Cal.App.5th 418.

Authority

- Prob. Code, 850, subd. (a)(1)(C)
  - (a) The following persons may file a petition requesting that the court make an order under this part:
    - (1) A guardian, conservator, or any claimant, in the following cases:
      - (C) Where the guardian or conservator or the minor or conservatee is in possession of, or holds title to, real or personal property, and the property or some interest therein is claimed to belong to another.
- No published case interprets Prob. Code, 850, subd. (a)(1)
  - Reviewed *de novo* as a matter of statutory interpretation

Parker v. Schwarcz (2022) 84 Cal.App.5th 418.

Issue

- Whether the communications and documents from temporary conservator's services to Cynthia's estate are the type of personal property interests that can properly be sought through and adjudicated in a section 850 petition.

Conclusion

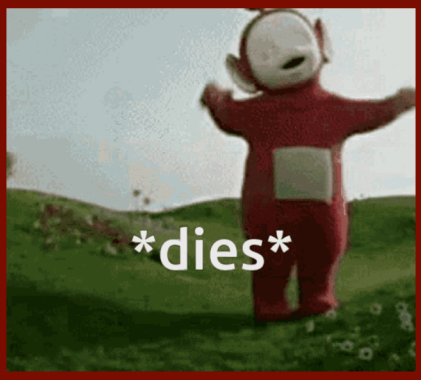
- "They are not." These are not the type of property interests that are the proper subject of an 850 petition.

Analysis

- The Legislature intended section 850 to provide a mechanism for probate courts to resolve ownership disputes with respect to personal property constituting assets of an estate.
  - Based on legislative history and case law construing Prob. Code, 850 and its predecessor statutes.
  - Nothing suggests the Legislature intended for section 850 to be used to obtain communications and documents from a conservator's administration of a conservatorship estate.
  - Not the personal property interest customarily litigated under section 850.
- Statutory scheme was designed to allow conveyances or transfers of real and personal property into or out of an estate, trust, conservatorship, or guardianship estate as part of an expedited court proceeding.
  - Aim was to allow probate courts to resolve controversies surrounding title to property and to determine rights in property involving estates. (See, e.g., *Estate of Dabney* (1951) 37 Cal.2d 672, 676; *Richer v. Superior Court* (1976) 63 Cal.App.3d 748, 756; *Dudek v. Dudek* (2019) 34 Cal.App.5th 154, 170-171.
- Inapposite cases argued: *Moeller v. Superior Court* (1977) 16 Cal.4th 1124; *FTIC v. Klein* (2017) 9 Cal.App.5th 1184.
  - "put the cart before the horse since they do not address the threshold issue of whether section 850 may be used to request such documents"

Welch v. Welch (2022) 79 Cal.App.5th 283.

"Waive your spousal rights goodbye"



Welch v. Welch (2022) 79 Cal.App.5th 283.

Holding:

When one spouse dies during dissolution proceedings, after marital settlement agreement entered but before final dissolution decree, the surviving spouse effectively waived the right to inherit under the terms of the marital settlement agreement.

Welch v. Welch (2022) 79 Cal.App.5th 283.

Facts

- Spouses separated
- Spouses in dissolution proceedings
  - Mediation
  - Marital settlement agreement
  - Disputes over marital settlement agreement
- Spouse dies during dissolution proceedings (terminate as a matter of law)
- Probate proceedings commence
  - Son and surviving spouse file competing petitions for probate
    - Probate Court grants surviving spouse's petition for probate of pour-over will
  - Deceased spouse's son filed an 850 petition which sought a declaration of heirship
    - Surviving spouse objects, claiming rights to inherit
  - Dispute:
    - No party disputed status as a surviving spouse (Prob. Code, 78, subd. (b))
    - Parties disputed whether surviving spouse waived his spousal rights (for appointment and to inherit) under the marital settlement agreement
- Probate court held that surviving spouse did not waive his rights
- Court of appeal reversed and remanded

Welch v. Welch (2022) 79 Cal.App.5th 283.

Authority

Crux:

- Prob. Code, 140 et seq. re: Waiver of Rights by Surviving Spouse
  - Waiver of "all rights" by surviving spouse (Prob. Code, 145)
    - "Unless the waiver or property settlement provides to the contrary, a waiver . . . of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse, or a complete property settlement entered into after or in anticipation of separation or dissolution or annulment of marriage, is a waiver by the spouse of the rights described in [Prob. Code, 141, subd. (a)]."
  - Rights that a surviving spouse may waive (Prob. Code, 141, subd. (a))
    - Subd. (a)(8), "The right to take the statutory share of an omitted spouse"
    - Subd. (a)(9), "The right to be appointed as the personal representative of the decedent's estate"

Other Nuggets:

- Definition of surviving spouse (Prob. Code, 78, subd. (b))
  - "'Surviving spouse' does not include . . . [a] person who obtains or consents to a final decree or judgment of dissolution of marriage . . . from the decedent. . . ."
- Civ. Code, 1635 et seq. and Case Law re: Marital Settlement Agreements:
  - Marital property settlement agreements are favored under California law and governed by general contract principles.
  - A settlement must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.
  - The intention of the parties must be first determined from the language of the contract itself.
  - Where the language of the contract is ambiguous, the court must resolve the ambiguity by taking into account all the facts, circumstances, and conditions surrounding the execution of the contract.

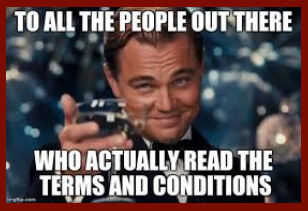
Welch v. Welch (2022) 79 Cal.App.5th 283.

Analysis

- Marital settlement agreement was not dependent upon entry of judgment of dissolution.
- Marital settlement agreement was a "complete property settlement" within the meaning of Prob. Code, 145.
- Prob. Code, 145 operates as a statutory waiver of certain surviving spouse's rights as enumerated in Prob. Code, 141
  - including the rights to inherit from the deceased spouse and to be appointed as the personal representative of the deceased spouse's estate.

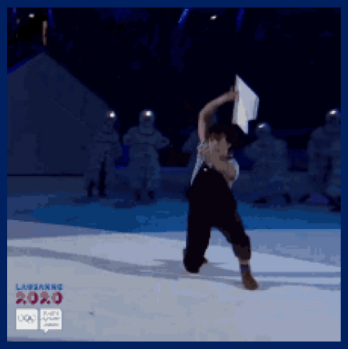
Conclusion

- Marital settlement agreement controlled; surviving spouse had waived his rights in deceased spouse's estate.



Bruno v. Hopkins (2022) 79 Cal.App.5th 801.

"We don't talk about Bruno's payout"



Bruno v. Hopkins (2022) 79 Cal.App.5th 801.

Holding

After losing trial that found trust was not forged, daughter liable to pay mother's/respondents' attorneys' fees and costs well in excess of her own share of the trust because she acted without reasonable basis in filing her claims, brought the proceedings in bad faith, and statutes authorized such award for fees and costs.

Bruno v. Hopkins (2022) 79 Cal.App.5th 801.

Facts

- 2 parents, 4 daughters
- Parents created a trust
  - Parents left gifts of $200k to each of 2 daughters; remainder to other two daughters
  - At time trust was created, worked out to about equal shares to each of 4 daughters
- 4 daughters unequal
  - Parents were concerned that the daughters whom were to receive the $200k gifts did not have careers
  - As time passed, parents took steps for bulk of estate to go to the two daughters who were residuary beneficiaries (gifted their shares of employer's stock to them)
- Eventually, trust became worth $4-$5 million.
- 1 daughter of $200k gift said saw/"perused" a new trust that left shares equally to 4 daughters
  - Mother denied
- Father died, mother served 16061.7 notice 9 years later, daughter requested copy of trust, mother provided only irrevocable portions of the trust showing the $200k gift
- Daughter filed petition to compel the trust and father's will
- Daughter hired experts who analyzed the trust
- Daughter amended petition to add removal of mother as trustee and declare trust instrument a forgery.
- Trial. Daughter lost. ~$1million Attorneys' fees and costs awarded to mother/respondents. Daughter appealed.
- Affirmed.

Bruno v. Hopkins (2022) 79 Cal.App.5th 801.

Facts (cont'd)

- Probate Court's Findings
  - Probate court found that daughter did not meet her burden of proof and that she should take nothing by way of her petition. On same bases, court granted respondents' motion for costs.
    - Did not find her credible
    - Found mother most credible with reasonable explanation why parents so bequeathed their estate
    - Did not believe daughter's experts about "disturbances" in paper fibers and possible staining to age pages
- Appellant's Arguments
  - Probate court erred in ordering her to pay fees/costs in excess of the value of her potential share of the trust assets.
  - Probate court erred when it found that she instigated the litigation in bad faith or without reasonable belief she would prevail.

Bruno v. Hopkins (2022) 79 Cal.App.5th 801.

Authority

- Attorneys' fees and costs
  - Trial court's equitable powers could not justify attorneys' fees award in excess of daughter's share of the trust assets.
    - Inherent jurisdiction of equity to enforce trusts and protect trust estate, including allocating trust expenses.
    - *Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172, 215
      - Trial court's equitable power over trusts gives the court authority to charge attorney fees and costs against a beneficiary's share of the trust estate if the beneficiary instigated an unfounded proceeding against the trust in bad faith.
  - Probate proceedings are statutory in nature. (Powers given by statute and such incidental powers to enable it to exercise its jurisdiction)

Bruno v. Hopkins (2022) 79 Cal.App.5th 801.

Authority

- Attorneys' fees and costs
  - Prob. Code, 15642, subd. (d) [Authorizes an award of fees against a trust beneficiary in excess of their share of the trust estate]
    - "If the court finds that the petition for removal of the trustee was filed in bad faith and that removal would be contrary to the settlor's intent, the court may order that the person or persons seeking the removal of the trustee ***bear all or any part of the costs*** of the proceeding, including reasonable attorney's fees."
      - Amount is not limited to the moving party's interest in the trust at issue. (i.e., personal liability.)
      - Probate court must make findings, supported by evidence.
        - "Bad faith involves a subjective determination of the contesting party's state of mind—specifically, whether he or she acted with an improper purpose."
        - "A party cannot rely on a plainly unqualified expert, or a sham opinion, to avoid cost of proof of sanctions . . . Something about the state of the evidence must make the party's reliance on its own expert's opinion unreasonable. Whether a party has a reasonable ground to believe he or she will prevail necessarily requires consideration of all the evidence, both for and against the party's position, known or reasonably available . . ."
  - Code Civ. Proc., 2033.420 [trial court can order a party who failed to admit the truth of a matter in an RFA to pay the costs of proof, including attorneys' fees]

Conclusion

- Statutes authorized attorneys' fees and costs; respondents cited statutes; award supported by facts

King v. Pacific Gas & Electric Company (2022) 82 Cal.App.5th 440.

"Let me join in on the action"

King v. Pacific Gas & Electric Company (2022) 82 Cal.App.5th 440.

Holding

An heir must be granted leave to intervene as a matter of right so long as the statutory requirements for intervention have been met. (Code Civ. Proc, 387, subd. (d)(1)(B).)

King v. Pacific Gas & Electric Company (2022) 82 Cal.App.5th 440.

Facts

- Former spouse (mother of decedent's minor child), as personal representative of decedent's estate, brought action against helicopter company for wrongful death/damages.
- Surviving spouse filed motion to intervene as a matter of right.
- Trial court denied the motion. Surviving spouse appealed.
- Reversed and remanded with direction to reconsider motion to intervene.

Authority

- Intervention (Code Civ. Proc., 387)
  - An intervener becomes a party to an action or proceeding between other persons by joining a plaintiff, uniting with defendant, or demanding anything adverse to both a plaintiff and a defendant. (Subd. (b).)
  - Permissive and mandatory intervention. (Subd. (d).)
  - Main purpose of intervention is "to obviate delay and multiplicity of actions by creating an opportunity to those directly interested in the subject matter to join *in an action already instituted.*"
- Wrongful Death (Code Civ. Proc., 377.60)
  - Action is *solely* for the benefit of the heirs by which they may be compensated by the pecuniary loss suffered by them by reason of the loss of their relatives. The money recovered constitutes no part of the estate of the deceased . . . [the money is] solely . . . For the benefit of the heirs . . ." (*Estate of Riccomi* (1921) 185 Cal. 458.)

King v. Pacific Gas & Electric Company (2022) 82 Cal.App.5th 440.

Analysis

- Here, mandatory intervention:
  - "The trial court '*shall*, upon timely application, permit a nonparty to intervene in the action or proceeding' if '[t]he person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties.'" (Code Civ. Proc., 387, subd. (d)(1)(B).)
- Surviving spouse is an heir.
  - She is entitled to intervene as a matter of right in the pending wrongful death action filed by the personal representative
  - So long as she meets the statutory requirements for mandatory intervention.
- In deciding the motion to intervene, the question is not whether the surviving spouse can pursue a cause of action for wrongful death, but whether she is entitled to intervene as a matter of right in the pending wrongful death action filed by the personal representative.
- Supports the "one action" rule
  - Defendants will still be defending a single cause of action for wrongful action in one litigation and will still be subject to one judgment binding against all parties entitled to recover damages under the statute.

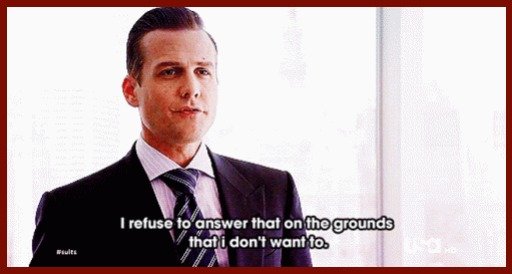
Conclusion

- Reversed and remanded for trial court to reconsider motion to intervene.

Conservatorship Cases

Conservatorship of Eric B (2022) 12 Cal.5th 1085.

LPS: Equal Protection from Compelled Testimony



Conservatorship of Eric B (2022) 12 Cal.5th 1085.

Summary

- LPS Conservatorship
  - Jury trial on whether proposed conservatee was gravely disabled
  - Appellant objected to giving compelled testimony at trial
  - Court overruled objection
  - Public Guardian called proposed conservatee, who testified
  - LPS conservatorship granted; jury found gravely disabled
- Appeal challenged order compelling conservatee's testimony
- Although LPS conservatorships are statutory, because of liberty interests at stake in commitment proceedings, courts have applied similar principles as criminal proceedings
  - Like in certain criminal proceedings (NGI, not guilty by reason of insanity), conservatee should have the right not to give compelled testimony at commitment trial
- Based on equal protection principles
- Even though probate court erred, harmless; other witness testimony established grave disability

K.R. v. Superior Court (2022) 80 Cal.App.5th 133.

LPS hearing ≠ trial, even with witnesses

K.R. v. Superior Court (2022) 80 Cal.App.5th 133.

Summary

- LPS Conservatorship
- Proposed conservatee entitled to court or jury trial on whether they are "gravely disabled"
  - Court must personally advise of this right
  - Proposed conservatee may demand a trial either before or after the hearing on the conservatorship petition
- Probate Court held a hearing that had witness testimony and arguments
  - At no time before the hearing did proposed conservatee or counsel demand a court or jury trial
  - Court never personally advised proposed conservatee of right to jury trial
  - Immediately after Probate Court announced its decision to establish the conservatorship, counsel demanded a jury trial.
    - Probate Court denied the demand.
- Petition granted; peremptory writ of mandate issued for probate court to vacate its order denying demand for jury trial and enter new order granting demand and setting trial
  - Probate Court erred in denying a proposed conservatee's jury trial demand
  - The hearing was not actually a bench trial; the proposed conservatee did not forfeit or waive her right to a jury trial by participating in the hearing.
    - Hearing and trial distinguished in Welf. & Inst. Code, 5350, subd. (d)(1).

Conservatorship of A.A. (2022) 84 Cal.App.5th 66.

"Please ignore my guilty plea"

Conservatorship of A.A. (2022) 84 Cal.App.5th 66.

Summary

- Person pleaded guilty of crime, represented by counsel, plea not challenged or set aside
  - Plea established guilt beyond a reasonable doubt
- Person later found incompetent
- LPS Murphy Conservatorship (for criminal defendants)
  - Usually, need to have a formal probable cause hearing to determine that proposed conservatee is "gravely disabled"
  - No probable cause hearing held
  - Murphy conservatorship established
- Conservatee appealed
  - Argued the criteria for Murphy conservatorship were not met
- Affirmed
  - No need to hold a probable-cause hearing about underlying charges to which a guilty plea has been entered and still stands

Conservatorship of Joanne R. (2021) 72 Cal.App.5th 1009.

"Because of Covid"

Conservatorship of Joanne R. (2021) 72 Cal.App.5th 1009.

Summary

- LPS conservatorship
- Up for renewal (petition for reappointment)
- Conservatee contends that the Probate Court:
  - Did not provide an adequate jury trial waiver advisement, and
  - Improperly induced her to waive her right to a jury trial
    - Court stated: *you can either have a court trial today or a jury trial in 9 months*
- Conservatee picked court trial that day; waived jury trial
  - Conservator was reappointed.
- Court of appeal found no violation of conservatee's statutory right to a jury trial
  - Probate Court's statement provided complete information to enable conservatee to make a knowing, intelligent, and voluntary decision whether to waive her right to a jury trial.
- Court of appeal cautioned the Superior Court that a 9-month delay for a jury trial where the conservatorship would otherwise end in a year, would raise serious constitutional concerns in light of the significant liberty interests at stake
  - But, Covid. So, kind of OK.