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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of STANLEY A. GRISWOLD,  
Deceased.

SEIW MEE GRISWOLD,

Plaintiff and Appellant,

v.

S. FRANK GRISWOLD, as Trustee, etc.,

Defendant and Respondent.

D058713

(Super. Ct. No. P192148)

APPEAL from a judgment of the Superior Court of San Diego County, Gerald Jessop, Judge. Affirmed.

Siew Mee Griswold (Sharon), the surviving spouse of Stanley A. Griswold (Stanley), appeals a judgment denying her petition to declare the first amendment to the Griswold Family Trust (Trust) a forgery and therefore void, and for her to share in

Stanley's estate as an omitted spouse pursuant to Probate Code<sup>1</sup> section 21600 et seq. On appeal, Sharon contends the evidence is insufficient to support the judgment because the trial court: (1) misapplied applicable statutes; (2) gave undue weight to the self-serving testimony of witnesses presented by the Trust's successor trustee; and (3) insufficiently weighed the experts' testimony regarding Stanley's handwriting.

#### FACTUAL AND PROCEDURAL BACKGROUND

On or about July 15, 1996, Stanley and Phyllis Griswold (Phyllis), his wife at that time, created the Trust. The Trust stated Stanley had three adult children from a former marriage. Stanley and Phyllis had no children from their marriage. The Trust provided that on the death of the survivor of its trustees (i.e., Stanley and Phyllis) that Stanley's son, S. Frank Griswold (Frank), would become the successor trustee. On or about April 7, 1997, Phyllis died.

In April 2000, Sharon came to the United States on a six-month visitor's visa. A few weeks later, she met Stanley at a ballroom dancing class. On June 30, 2000, Sharon and Stanley married. At that time, Stanley was 80 years old and Sharon was 41 years old.

In the summer of 2002, Stanley was hospitalized for chest pains and subsequently cared for at a skilled nursing facility. On his return home, Stanley asked Frank, an attorney, to prepare a first amendment to the Trust (Amendment) to ensure the Trust's assets would be allocated among his three children and that allocation would not be affected by his intention to separate from and divorce Sharon. On July 28, 2002, Stanley

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<sup>1</sup> All statutory references are to the Probate Code unless otherwise specified.

signed the Amendment in the presence of Frank, Frank's wife Genevieve, and Frank's son Stanley. The Amendment stated in part:

"B. Trustor Stanley A. Griswold has married in August 2000, to Sharon Griswold, and has made separate gifts and transfers to the benefit of Sharon Griswold outside of this trust agreement.

"C. In view of such events, Trustor desires to revise the terms of the trust as follows. [¶] . . . [¶]

" . . . STANLEY A. GRISWOLD, hereby amends the Trust in the following particulars: [¶] . . . Trustor confirms that he has provided for Sharon Griswold by separate transfer outside of the Trust."

In November 2002, Stanley retained attorney Sally Kurtz, apparently to represent him in proceedings to dissolve his marriage to Sharon.

On or about April 27, 2006, Stanley died. As a result, the Trust became irrevocable and Frank became its successor trustee.

In November 2006, Sharon filed a petition (Petition) for an order declaring the Amendment void as a forgery and for her to share in Stanley's estate as an omitted spouse pursuant to section 21600 et seq. Frank, as the Trust's successor trustee, opposed the Petition.<sup>2</sup> Frank alleged that Stanley and Sharon separated on September 29, 2002, and that on October 9, 2002, they filed for divorce. He alleged Stanley's signature on the Amendment was not a forgery and that Stanley had shown his intent to provide for Sharon outside the Trust. During a bench trial, the trial court heard the testimony of

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<sup>2</sup> Although shortly before trial Sharon requested leave to file an amended petition, she apparently abandoned that request and proceeded at trial on the allegations set forth in the Petition.

several percipient and expert witnesses and admitted in evidence numerous documents on the issues of whether Stanley's signature on the Amendment was a forgery and whether he intended his transfers outside the Trust to be in lieu of providing for Sharon under the Trust. The trial court entered judgment against Sharon and denied the Petition. Sharon timely filed a notice of appeal.

## DISCUSSION

### I

#### *Substantial Evidence Standard of Review*

"When the trial court has resolved a disputed factual issue, the appellate courts review the ruling according to the substantial evidence rule. If the trial court's resolution of the factual issue is supported by substantial evidence, it must be affirmed." (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) The substantial evidence standard of review involves two steps. "First, one must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all *reasonable* inferences. [Citation.] Second, one must determine whether the evidence thus marshaled is substantial. While it is commonly stated that our 'power' begins and ends with a determination that there is substantial evidence [citation], this does not mean we must blindly seize any evidence in support of the respondent in order to affirm the judgment. . . . [Citation.] '[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value . . . .' [Citation.] The ultimate determination is whether a

*reasonable* trier of fact could have found for the respondent based on the *whole* record." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633, fns. omitted.) "[T]he power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

## II

### *Section 21600 Et Seq.*

Section 21600 states that "[t]his part shall apply to property passing by will through a decedent's estate or by a trust . . . that becomes irrevocable only on the death of the settlor." Section 21610 provides for omitted spouses to share in a decedent's estate in certain circumstances, stating:

*"Except as provided in Section 21611, if a decedent fails to provide in a testamentary instrument for the decedent's surviving spouse who married the decedent after the execution of all of the decedent's testamentary instruments, the omitted spouse shall receive a share in the decedent's estate, consisting of the following property in said estate:*

"(a) The one-half of the community property that belongs to the decedent under Section 100.

"(b) The one-half of the quasi-community property that belongs to the decedent under Section 101.

"(c) A share of the separate property of the decedent equal in value to that which the spouse would have received if the decedent had died without having executed a testamentary instrument, but in no event is the share to be more than one-half the value of the separate property in the estate." (Italics added.)

Section 21611 provides exceptions to section 21610's omitted spouse provisions, stating in part:

"The spouse shall not receive a share of the estate under Section 21610 if any of the following is established:

"(a) The decedent's failure to provide for the spouse in the decedent's testamentary instruments was intentional and that intention appears from the testamentary instruments.

"(b) The decedent *provided for the spouse by transfer outside of the estate* passing by the decedent's testamentary instruments and *the intention that the transfer be in lieu of a provision in said instruments is shown by statements of the decedent* or from the amount of the transfer *or by other evidence.*" (Italics added.)

### III

#### *Substantial Evidence to Support the Judgment*

Sharon contends the evidence is insufficient to support the judgment because the trial court: (1) misapplied applicable statutes; (2) gave undue weight to the self-serving testimony of Frank's witnesses; and (3) insufficiently weighed the experts' testimony regarding Stanley's handwriting.

#### A

Sharon argues the evidence is insufficient to support the trial court's finding that section 21611 applied in this case to provide an exception to the omitted spouse

provisions of section 21610. She argues "although there was testimony by [Frank's] witnesses that . . . Stanley had provided for . . . Sharon outside of the [T]rust, none of these witnesses could point to any significant property transfers from . . . Stanley to . . . Sharon" that could show his intention that those transfers outside the Trust be in lieu of providing for her under the Trust.

Based on our review of the record, we conclude there is substantial evidence to support the trial court's finding that Stanley provided for Sharon by transfers outside the Trust and intended those transfers to be in lieu of providing for her under the Trust. (§ 21611, subd. (b).) First, there was extensive testimony regarding transfers made by Stanley to, or for the benefit of, Sharon. At trial, Frank testified that Stanley provided for Sharon outside the Trust by making cash transfers, creating bank and stock accounts, buying her a car, paying for her nursing exam classes, paying for the nursing exam, and paying for her immigration attorney's services. Kurtz testified Stanley told her he provided for Sharon so she could stay in the United States and practice as a nurse. She testified he set up bank accounts for Sharon and invested money in stocks on her behalf. Sharon testified that Stanley paid \$1,700 for a car for her, wrote various checks to her that she deposited into her bank account, and paid \$2,000 toward her immigration attorney's initial fees and about \$300 toward subsequent fees. Sharon admitted that between April 2001 and April 2002 Stanley wrote checks to her totaling more than \$10,000. There is substantial evidence to support a finding that Stanley provided for Sharon by transfers outside the Trust. Sharon's assertion that her trial testimony showed Stanley did not make all of the transfers discussed above either misconstrues and/or

misapplies the substantial evidence standard of review.<sup>3</sup> (*Kuhn v. Department of General Services*, *supra*, 22 Cal.App.4th at pp. 1632-1633 [we resolve all explicit conflicts in the evidence in favor of the respondent and make all reasonable inferences from the evidence in favor of the judgment]; *Bowers v. Bernards*, *supra*, 150 Cal.App.3d at pp. 873-874.)

Second, there is substantial evidence to support a finding Stanley had the intention that his transfers to Sharon outside the Trust were to be in lieu of providing for her under the Trust. (§ 21611, subd. (b).) The Amendment recited that Stanley had "made separate gifts and transfers to the benefit of Sharon . . . outside of [the Trust]" and amended the Trust to state that he "confirms that he has provided for Sharon . . . by separate transfer outside of the Trust." At trial, there was testimony regarding Stanley's statements before and after his execution of the Amendment that showed his intention his transfers to Sharon outside the Trust were to be in lieu of provisions for her under the Trust. Frank testified that shortly after Stanley returned home from the skilled nursing facility in 2002

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<sup>3</sup> Furthermore, to the extent Sharon argues the amounts of Stanley's transfers to her outside the Trust were insignificant and therefore insufficient for section 21611, subdivision (b), to apply, she does not cite any apposite case or other authority supporting that argument and does not otherwise persuade us Stanley's transfers were insufficient for purposes of the section 21611, subdivision (b), exception to the section 21610 omitted spouse provisions. On the contrary, we believe that transfers outside a trust in amounts well exceeding \$10,000 cannot be deemed insufficient as a matter of law. (Cf. *Estate of Bridler* (1958) 165 Cal.App.2d 486, 487-489 [transfers of property worth over \$4,000 was sufficient provision for purposes of former section 70; even a nominal transfer is adequate].) Assuming *arguendo* more than a nominal transfer is required for section 21611, subdivision (b), to apply, we conclude there is substantial evidence to support the trial court's finding that the amounts transferred to Sharon outside the Trust were not merely nominal and were significant and sufficient for that statutory exception to apply.

he visited Stanley. Stanley asked Frank to prepare the Amendment, explaining to Frank that his intent for the Amendment "was to ensure that his assets, which were primarily entirely in [the Trust] were to continue to be passed as the [T]rust had directed and allocated amongst his three children and would not be affected by his current marriage and pending divorce." On July 28, 2002, prior to Stanley signing the Amendment, Frank explained to him that the Amendment would ensure the Trust's assets would continue to be distributed as he had planned regardless of his marital status and were not to be provided or allocated in any way to Sharon. Frank noted the Amendment recited that Stanley had provided for Sharon separately.

Kurtz also testified at trial regarding statements Stanley made to her in the course of her representation of him from 2002 until his death in 2006. She said Stanley explained to her how he provided for Sharon outside the Trust. She testified:

"[Stanley] was very concerned about Sharon. He provided for her to be able to stay in this country. Her visa . . . [was] about . . . to expire. And he told me he married her so she could stay in the country. He provided for her so that she could be able to practice as a nurse in this country. He had set up some bank accounts for her. He was investing money on her behalf, using his interest in investing stocks on her behalf. [¶] . . . [¶] . . . [H]e explained to me that there was . . . a family trust, and that he had done whatever documents were necessary to provide for Sharon outside of the [T]rust. He was very specific outside of the [T]rust."

She testified she discussed the Trust with Stanley, who stated there were documents and that he had taken care of providing for Sharon outside of the Trust.

Genevieve testified she saw Stanley sign the Amendment, and that after signing it he appeared to be very happy it was signed and basically said, "now it's over," referring

to Sharon. Frank's son (also named Stanley) also testified he saw the decedent Stanley sign the Amendment and afterward Stanley stated: "Now, that's the end of it. It's over." To him, that meant Stanley had taken care of Sharon and the relationship was over in his mind.

Based on the above evidence, we conclude there is substantial evidence to support a reasonable inference that Stanley had the intention his transfers to Sharon outside the Trust were to be in lieu of providing for her under the Trust. (§ 21611, subd. (b).) Because there is substantial evidence to support the trial court's finding that Stanley provided for Sharon by transfers outside the Trust and intended those transfers to be in lieu of providing for her under the Trust, the trial court properly found the section 21611, subdivision (b), exception to section 21610's omitted spouse provisions applied to bar Sharon from sharing in the Trust's assets.

## B

Sharon argues the trial court erred by giving undue weight to the self-serving testimony of Frank's percipient witnesses (i.e., Frank, Genevieve, and Frank's son), who testified they saw Stanley sign the Amendment. Citing Evidence Code section 780, she argues the trial court did not properly consider those witnesses' biases, interests, or other motives in determining their credibility.

However, the record does not support Sharon's argument. After counsel's closing arguments, the trial court stated:

"[Addressing Sharon's counsel], you are correct in that the three witnesses, Frank, Genevieve and Stanley [Frank's son], do tend to benefit by testifying in favor of the authenticity of the signature on

the [Amendment]. However, as I looked at that testimony, they did corroborate each other. Specifically they mentioned that [Stanley] was wearing glasses . . . at the time. He was seated, and he was seated in a wheelchair, and he was seated at a table. I think the living room table was the specific table that they mentioned during the course of the testimony."

Nevertheless, the court commented that their testimony was not persuasive (presumably by itself), but rather the case "came down to" a "battle of the experts."

The trial court's statement showed it did, in fact, consider the biases of Frank's three percipient witnesses who testified they saw Stanley sign the Amendment in weighing the credibility of that testimony. Absent affirmative evidence showing otherwise, we must presume the trial court properly followed the law, including how to weigh the credibility of witnesses. Furthermore, because the court concluded the case came down to a battle of the experts, we cannot conclude the court gave undue weight to the testimony of those three percipient witnesses. In effect, the court stated the outcome of the case turned on expert testimony and not the testimony of Frank's percipient witnesses. We are not persuaded by Sharon's contention that the trial court erred by giving undue weight to those self-interested witnesses.

## C

Finally, Sharon argues the trial court insufficiently weighed the experts' testimony regarding Stanley's handwriting. At trial, Sharon presented the testimony of Jess Dines, a handwriting expert, on the issue of whether the signature on the Amendment was Stanley's signature. Without restating his extensive testimony comparing the signature on the Amendment with other documents purportedly bearing Stanley's signature, Dines

ultimately stated it was his opinion that it is highly probable the signature on the Amendment was not Stanley's genuine signature.

Frank presented the testimony of Sandra Homewood, a handwriting expert, on the issue of whether the signature on the Amendment was Stanley's signature. Without restating her extensive testimony comparing the signature on the Amendment with other documents purportedly bearing Stanley's signature, Homewood ultimately stated it was her opinion that the signature on the Amendment probably is Stanley's genuine signature. She further testified she found no evidence that it was a forged signature.

As discussed above, the trial court concluded this case basically came down to a battle of the experts (i.e., Dines and Homewood). The court stated: "The question really is, which expert was more credible on the witness stand." The court found Homewood used more contemporaneous standards (i.e., comparison signatures) in her analysis. It also found Homewood's training, education and experience was credible. It was not persuaded Dines had the proper training for a questioned document examiner. Regarding the effect of Stanley's health at the time of the Amendment, the court stated:

"[A]t that time [Stanley] had been released from the hospital, and so the court logically would assume that he was in a weakened state, and given some time to regain his health, the strength of his signature would have improved along with his health. This episodic nature of his health I think was a factor that Mr. Dine[s] discounted unduly, so I think that an individual, as he becomes stronger, and as Miss Homewood testified, becomes more forceful in [his] signature."

The court found illogical Dines's testimony that it did not matter whether Stanley was wearing glasses when he signed documents. It also found incredible Dines' testimony

that it was not important what position the writer (i.e., Stanley) was in at the time of signing a document. The court found the signature on a December 7, 2002, correction deed, acknowledged by a notary public, was, in fact, Stanley's signature and that signature was "markedly similar to" the signature on the Amendment. The court concluded: "I'm satisfied that in this case [Stanley] did, in fact, execute the [A]mendment . . . ."

Based on our review of the record, we conclude the trial court adequately weighed the experts' testimony. Contrary to Sharon's apparent assertion, there was nothing in Homewood's testimony that was inherently incredible or showed she based her conclusions on speculative, remote or conjectural factors. (Cf. *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 487.) To the extent Sharon argues Stanley's ill health at the time of the Amendment "casts doubt on" Homewood's opinion that the signature on the Amendment was Stanley's, she either misconstrues and/or misapplies the substantial evidence standard of review.<sup>4</sup> The trial court properly found Stanley had sufficiently regained his health by the time of the Amendment and that his signature had improved from the time of his earlier hospitalization. It is not our function on appeal to reweigh the evidence or the credibility of witnesses. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479.) Rather, "the power of an appellate court *begins and ends* with the

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<sup>4</sup> To the extent Sharon argues Homewood's "attempts to diagnose" Stanley's health were outside the scope of her expertise, she did not object to such testimony at trial and therefore it was proper evidence for the court to consider. In any event, our review of the record does not show Homewood attempted to make any "diagnosis" of Stanley's health at the time of the Amendment.

determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*" (*Bowers v. Bernards, supra*, 150 Cal.App.3d at pp. 873-874.) Accordingly, we conclude Sharon has not shown the trial court improperly or insufficiently weighed the experts' testimony.<sup>5</sup> There is substantial evidence to support the judgment. (*Winograd v. American Broadcasting Co., supra*, 68 Cal.App.4th at p. 632.)

#### DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

IRION, J.

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<sup>5</sup> We summarily reject Sharon's argument that the trial court erred by admitting photocopies of legal-sized documents that had been reduced to letter size. However, Sharon has not cited to the record showing she objected to their admission at trial. Therefore, we conclude she has waived that argument on appeal. (Evid. Code, § 353, subd. (a); *Brodén v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1227.)