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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Estate of JEAN HUTCHINSON
SCHMITT, Deceased.

NORMA SAIKHON, as Public
Administrator, etc.

Petitioner and Respondent,

v.

TERESA REYES,

Objector and Appellant.

D059491

(Super. Ct. No. EPR01922)

APPEAL from a judgment of the Superior Court of Imperial County, Jeffrey B. Jones, Judge. Affirmed.

Teresa Reyes appeals from a judgment of the superior court invalidating a donative transfer of a Metropolitan Life Insurance Company (MetLife) investment account to Reyes made by an elderly woman (Jean Schmitt) shortly before Schmitt's

death.¹ Applying the relevant Probate Code laws, the trial court found that Schmitt was a dependent adult and that Reyes was her care custodian, which triggered a rebuttable presumption that the transfer was the product of fraud, menace, duress, or undue influence. The court concluded that Reyes had not carried her burden to rebut the presumption of undue influence by clear and convincing evidence.

On appeal, Reyes asserts the judgment should be reversed because the trial court (1) erred in finding that Schmitt was a dependent adult and Reyes was her care custodian, (2) imposed a burden of proof higher than the clear and convincing standard, and (3) erred with respect to its ruling on undue influence. We reject these contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Reyes worked at the Schmitt household for about 17 years. Schmitt's husband (Joe Schmitt) died in December 2007. In June 2008, at age 86, Schmitt fell at her home and broke her hip. Schmitt was admitted to the hospital and died five days later. While Schmitt was in the hospital, she signed a form naming Reyes as the beneficiary of a money market account with MetLife valued at approximately \$112,800.

Schmitt died intestate, and her only surviving heir was a half brother living in Texas with whom she had little contact. Shortly after Schmitt's death, the Imperial County public administrator (Norma Saikhon) petitioned the court to administer Schmitt's

¹ MetLife was originally named as a party to the proceedings; however, it was dismissed from the case after the funds in Schmitt's MetLife account were transferred to the public administrator and placed in a blocked account pending resolution of the matter.

estate, and the petition was granted. Thereafter, the public administrator filed a petition to declare Reyes a disqualified transferee of the MetLife account under the Probate Code due to her position as the care custodian of a dependent adult/transferor.

The parties called various witnesses to testify regarding Schmitt's physical and mental condition; the services that Reyes provided to Schmitt; Schmitt's donative intent; and the circumstances under which the MetLife beneficiary form was executed. The witnesses included Reyes; Coni Stokely (who managed Schmitt's financial affairs and helped Schmitt secure the MetLife beneficiary form); public administrator Saikhon; and several of Schmitt's friends.

In the months prior to her death, Schmitt was in "frail" condition. She spent most of her time in bed because she felt she did not have the strength to get up and get dressed. When she was out of bed, she usually stayed in her robe. She could not drive because of a vision problem in one eye. Schmitt was able to dress and feed herself, and she could take care of her personal hygiene needs without assistance. Although she could walk by herself, a friend who visited her at her home observed that she appeared "a little hesitant in her walking" and tried (unsuccessfully) to get her to use a walker or cane.

Reyes worked seven days a week for five hours a day at Schmitt's home. Schmitt, an ardent animal lover, had five dogs and 30 or 40 cats living at her residence. Her animals were like children to her. Reyes's duties included taking care of the animals and running Schmitt's household. Reyes fed the animals, cleaned up outside and inside the residence, did the laundry, cooked meals for Schmitt, and answered the phone when

Schmitt was asleep. Reyes went shopping for groceries and household items, ran errands, and took the dogs to the veterinarian.

Stokely was hired by Schmitt to help manage her financial affairs after Schmitt's husband died. Stokely's duties included helping Schmitt manage an office building she owned, pay her business and personal bills, and conduct her banking. Stokely organized and provided Schmitt with information about her financial affairs, but Schmitt was mentally astute, actively involved in these matters, and made her own decisions.

On several occasions during the months prior to her death, Stokely talked to Schmitt about designating a beneficiary on her accounts and having a will prepared. They discussed various possible beneficiaries, including PETA, Greenpeace and the Sierra Club. However, Schmitt told Stokely she was not ready to make the beneficiary decisions and decided not to do anything at that point. According to Stokely, prior to Schmitt's hospitalization, Schmitt never discussed naming Reyes as a beneficiary on any account. Likewise, Reyes testified that Schmitt never told her that she wanted to give Reyes a gift because of all the years Reyes worked for her. Two of Schmitt's friends stated that Schmitt never mentioned anything about wanting to take care of Reyes after she passed away. One of Schmitt's friends testified that Schmitt talked only about her concern for the care of her animals, and she never identified anyone to whom she wanted to leave her house or assets.

Schmitt's Execution of the MetLife Beneficiary Form

On June 3, 2008, Schmitt fell at her home and broke her hip. Reyes found her on the floor, called for an ambulance, and stayed with her in the emergency room. After

several hours at the hospital, Schmitt told Reyes to go clean the house and feed the animals, and to bring Schmitt's checkbook when she returned. Reyes did this, and also stayed overnight at Schmitt's home as requested by Schmitt.

Stokely also visited Schmitt in the emergency room. While Stokely was there, Schmitt signed a "no-resuscitate form" brought in by a nurse, and Schmitt was aware of the possibility that she could die. Schmitt told Stokely that Reyes wanted to take care of the animals, and Schmitt wanted her to do this. Schmitt instructed Stokely to go to the bank and get some money for Reyes. Stokely said she could not do this because Schmitt had to physically go to the bank to take out the money, and the only money she could access was the money market account with MetLife. Stokely told Schmitt she could designate Reyes as the beneficiary on this account, and she could change her mind later if she wanted to. Schmitt instructed Stokely to "leave it for [Reyes]," and said that Reyes would "be able to take care of things for her." Schmitt said not to tell Reyes about this unless "something were to happen to her." Stokely told Schmitt she would bring the MetLife beneficiary form to her in the morning.

Schmitt underwent hip surgery that same evening. The following morning Stokely filled out the MetLife beneficiary form to designate Reyes as the beneficiary and reviewed the form with Schmitt at the hospital. Schmitt signed the form. Schmitt reiterated that she did not want Stokely to say anything about this unless something happened to her. Stokely did not tell Schmitt that by designating Reyes as the beneficiary on the account with no attached conditions, Reyes could do anything she wanted with the money.

Reyes visited Schmitt frequently while she was in the hospital. Schmitt did not say anything to her about giving her a gift. Schmitt was concerned about her animals and on several occasions she asked Reyes to take care of them while she was sick, which Reyes did. Schmitt gave Reyes checks so that she could buy food for the animals and for herself while she was staying at Schmitt's home. Reyes also assisted Schmitt with the logistics of her bill paying; i.e., bringing bills and checks from Stokely for Schmitt to review and sign.

Events After Schmitt's Death

On June 8, 2008, Schmitt died at the hospital. After her death, Stokely told Reyes that Schmitt had left her "something." Reyes responded, " 'She left me the house.' " Stokely told her that this did not occur, but that she had left her some money. Stokely did not tell Reyes that the money had been left for her to take care of the animals, and Reyes testified that she did not view the gift as conditioned on the animal care.

Stokely contacted public administrator Saikhon shortly after Schmitt's death. A few days later, Saikhon went to Schmitt's home and was admitted into the residence by Reyes. Saikhon saw that Reyes was moving furniture out of the house and that she had thrown away some documents. When Saikhon asked her why she was doing this, Reyes stated that Schmitt had given her the house. Reyes handed Saikhon a copy of a document which Reyes apparently believed was sufficient to prove that she owned the house. The document was a letter, dated February 19, 2008, which, according to Reyes, Schmitt had instructed her to write. The letter stated that Schmitt's "house and other things were

going to be for" Reyes.² Schmitt's name was signed at the bottom of the letter. Saikhon told Reyes that the document was not a will; Reyes was not authorized to move or discard anything; and Saikhon was going to be in charge of the estate until Saikhon or a court determined otherwise. Saikhon hired Reyes to continue to care for the animals for several months until the animals were adopted.

At trial, the public administrator presented evidence to challenge Reyes's good faith based on the February 2008 letter and her claim to Schmitt's house. An expert witness testified that he had compared known samples of Schmitt's signature with the signature on the February 2008 letter, and he concluded that the signature on the letter was not written by Schmitt. Reyes testified that she did not see Schmitt sign the letter, and she did not sign it for Schmitt.³ Reyes claimed that a few days after the letter was written, she gave it to Stokely to "put away." In contrast, Stokely testified that she was "pretty sure" that Reyes gave her the letter *after* Schmitt's death. Reyes also denied that she told Saikhon that Schmitt had given her the house; claimed she did not give the letter to Saikhon; and stated she had no expectation that she would get the house and other property based on the letter.

² Reyes testified that Schmitt dictated the letter to her when Schmitt was angry at Alex Jack (a man who had previously managed Schmitt's financial affairs). The letter stated that Schmitt told Reyes that Jack was waiting for Schmitt to die so he could keep her money and properties, but this was not going to happen and the house and other things were going to be for Reyes.

³ Reyes explained that she left the letter on the table next to Schmitt's bed. When Schmitt returned the letter to Reyes, the letter was folded and Reyes did not open it because she knew what she had written.

*Trial Court's Ruling*⁴

The trial court found that Schmitt was a dependent adult because she had been in failing health for several years before her death, and she was blind in one eye, could not drive, had trouble walking, and stayed in bed most of the day. Because of these physical limitations, Schmitt was unable to perform simple tasks such as driving, running personal errands, cleaning her house, and caring for the numerous animals living in and around her home. Schmitt was dependent on Reyes to perform these tasks. During the last six months of her life, Schmitt rarely got dressed, opting to remain in her robe most of the time, and she never left the house without Reyes's assistance.

The court further found that Reyes was Schmitt's care custodian because she worked seven days a week caring for Schmitt. She prepared most of Schmitt's meals, did the grocery shopping, cleaned the house, washed her clothes, drove her to her appointments, answered the phone when she was asleep, and took complete care of the numerous animals she had adopted. When Schmitt was in the hospital, she repeatedly

⁴ During the course of the proceedings, the court's rulings were issued on several different occasions. At the conclusion of the evidentiary presentation, the court orally set forth its tentative decision, but then took the matter under submission to allow the parties an opportunity to provide briefing on the care custodian issue. Thereafter, the court filed a written tentative decision. Reyes requested a statement of decision under Code of Civil Procedure section 632, and in response the public administrator prepared a proposed statement of decision and a revised proposed statement of decision. Reyes filed objections to these proposed statements, and the trial court thereafter filed its final statement of decision.

In our summation of the record and analysis, we at times refer to the court's tentative oral decision to the extent it is consistent with, and assists with the understanding of, the court's final written statement of decision. (See *Chapple v. Big Bear Super Market No. 3* (1980) 108 Cal.App.3d 867, 874; *Distribu-Dor, Inc. v. Karadanis* (1970) 11 Cal.App.3d 463, 468.)

interacted with Reyes to ensure that Reyes was carrying out her instructions and, in particular, that she was feeding and taking care of her animals. During Schmitt's hospitalization, Reyes continued to provide services consistent with those of a care custodian, including obtaining funds from Schmitt to buy food for the animals, running errands, and caring for the animals.

Finally, the court found that Reyes had rebutted the presumption of fraud, menace and duress, but she had not rebutted the presumption of undue influence. The court noted that the equities were on Reyes's side because she had provided loyal service for many years to Schmitt, whereas Schmitt had very little contact with her half brother. Further, the court recognized that if the burden was on the public administrator to show undue influence, Reyes would prevail. However, the court concluded that Reyes could not prevail under the statutory scheme.

The court observed that during her final days in the hospital, Schmitt repeatedly expressed concern about the care of her pets; Reyes spoke to Schmitt about taking care of her pets and received money from Schmitt for pet food; and Schmitt told Stokely not to tell Reyes about the decision she had made about the MetLife account. The court assessed that Reyes may have told Schmitt she would stop taking care of her pets unless Schmitt gave her a gift, which "threat" would likely have overcome Schmitt's will given her dedication to her pets. The court elaborated that Schmitt was of "sufficient and, perhaps, formidable intellectual capability" up until the time of her death and she would not have succumbed to any pressure constituting "menace"; however, her "weak point" was her love for animals which made her susceptible to undue influence. The court

posited that if Reyes intimated to Schmitt that unless there was money to take care of the animals she would need to get a job elsewhere, this type of statement would likely overcome Schmitt's will and compel her to make a gift to Reyes.

The court determined that although there was no direct evidence that Reyes had exerted undue influence on Schmitt in this fashion, Reyes had the opportunity to engage in this conduct, and the court was entitled to draw inferences from other confirmed conduct. The court stated that expert testimony showed that Reyes likely forged Schmitt's signature on a letter purporting to leave Reyes most of Schmitt's estate. Further, Reyes's credibility was in serious doubt because Reyes testified that she never showed the letter about the house to anyone and never made a claim to an ownership interest in Schmitt's home, whereas two witnesses said that Reyes did claim ownership to the house based on the letter.⁵

The court concluded the evidence supported an inference that the "circumstances under which the [MetLife] beneficiary form was signed were suspicious." The court

⁵ In its written statement of decision (prepared by the public administrator's counsel), the trial court also stated that at one point Reyes testified that Schmitt dictated the letter to her, and at another point she testified "*she never read the [l]etter that [Schmitt] purportedly handed to her prior to delivering it to Ms. Stokely,*" and that one of these statements must be false. (Italics added.) Our review of the record shows that Reyes did not testify that she never read the letter, but rather testified that she never *opened* the folded letter that Schmitt gave back to her. (See fn. 3, *ante.*) Reyes does not argue, nor do we find, that the factual misstatement in the written statement of decision undermines the support for the court's decision to draw an adverse credibility inference based on Reyes's denial that she used the letter to claim ownership of the house. We note that in the court's oral findings, the court accurately referred to Reyes's testimony that she never "looked . . . again" at the folded letter (a claim which the court viewed as "highly unlikely").

ruled the transfer to Reyes was invalid because Reyes did not show by clear and convincing evidence that the transfer was not the product of undue influence.

DISCUSSION

Reyes asserts the trial court (1) erred in deeming her a care custodian of a dependent adult, (2) imposed a burden of proof on her higher than the clear and convincing evidence standard, and (3) erred in its ruling on the undue influence issue.

I. *General Law Governing Donative Transfers from Dependent Adults*

Probate Code⁶ section 21350 provides that certain categories of persons cannot validly be recipients of donative transfers, including a "care custodian of a dependent adult who is the transferor." (§ 21350, subd. (a)(6); *Bernard v. Foley* (2006) 39 Cal.4th 794, 799-800 (*Bernard*).)⁷ This statutory prohibition is designed to prevent unscrupulous persons from obtaining gifts from dependent adults through undue influence or other overbearing behavior. (*Bernard, supra*, at p. 809.) Section 21351 creates several exceptions which allow a donative transfer to an otherwise prohibited transferee. Under section 21351, subdivision (b), the prohibition may be avoided if the transferor secures a certificate of independent review from an attorney who counsels the transferor and evaluates the transfer to ensure there is no fraud, menace, duress, or undue influence. (*Ibid.*; *Bernard, supra*, 39 Cal.4th at pp. 814-815.) Or, relevant here, under section

⁶ Subsequent unspecified statutory references are to the Probate Code.

⁷ In 2010, the Legislature rewrote and renumbered the Probate Code sections governing donative transfers by dependent adults (§ 21360 et seq.); however, the revised provisions do not apply to the donative instrument in this case (§ 21392, subd. (a) [new provisions apply to instruments that become irrevocable on or after January 1, 2011]).

21351, subdivision (d), a transfer may be validated if the court determines by "clear and convincing evidence, but not based solely upon the testimony of [a prohibited transferee], that the transfer was not the product of fraud, menace, duress, or undue influence."

Sections 21350 and 21351 create a rebuttable presumption that donative transfers from a dependent adult to the adult's care custodian are the product of fraud, menace, duress, or undue influence. (*Bernard, supra*, 39 Cal.4th at p. 800.) This presumption supplements the preexisting common law doctrine that a presumption of undue influence arises when a person in a confidential relationship with the transferor actively participates in procuring the transfer and benefits unduly from it. (*Estate of Winans* (2010) 183 Cal.App.4th 102, 113.) Unlike the common law, the statutory scheme does not require that the transferee receive an undue benefit, and it conclusively disqualifies a transferee who drafted the instrument. (§§ 21350, subd. (a)(1), 21351, subd. (e)(1); *Rice v. Clark* (2002) 28 Cal.4th 89, 98.)

The rebuttable presumption shifts the burden of proof to the transferee to establish by clear and convincing evidence that the transfer was not the product of fraud, menace, duress, or undue influence. (*Bernard, supra*, 39 Cal.4th at pp. 800, 812.) " ' "The effect of a presumption affecting the burden of proof is 'to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact.' [Citation.] While the presumption affecting the burden of producing evidence concerns only the particular litigation in which it applies, a presumption affecting the burden of proof 'is established to implement some public policy other than to facilitate the particular action in which it applies.' " ' " (*Farr v. County of Nevada* (2010) 187 Cal.App.4th 669, 681.)

The section 21350 presumption is designed to implement the public policy in favor of the security of those who entrust themselves to the administration of others. (*Bernard, supra*, 39 Cal.4th at p. 812.) Thus, the prohibited transferee has the affirmative obligation to disprove the presumed fact of undue influence or other overbearing conduct by clear and convincing evidence. (*Id.* at pp. 800, 812; see *Farr, supra*, 187 Cal.App.4th at p. 681.)

II. *Finding that Reyes Was a Care Custodian of a Dependent Adult*

A dependent adult under section 21350 includes any person "who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age." (Welf. & Inst. Code, § 15610.23, subd. (a); § 21350, subd. (c).) Further, a dependent adult includes persons "admitted as an inpatient to a 24-hour health facility" (Welf. & Inst. Code, § 15610.23, subd. (b); § 21350, subd. (c).) A care custodian includes any "person providing health services or social services" to the dependent adult. (Welf. & Inst. Code, § 15160.17, subd. (y); § 21350, subd. (c).) The section 21350 presumption is applied to care custodians because such persons " 'are often working alone and in a position to take advantage of the person they are caring for.' " (*Bernard, supra*, 39 Cal.4th at p. 810.)

To be characterized as a care custodian under section 21350, it is not necessary that the transferee be a professional caregiver. (*Bernard, supra*, 39 Cal.4th at pp. 797, 808.) When deciding the custodial care issue, the courts have considered whether the transferee was providing substantial, ongoing services essential to the adult's care and

well-being, or whether he or she was merely providing some assistance to an adult who was otherwise functioning without the transferee's assistance. (See *id.* at pp. 805-806; *Estate of Austin* (2010) 188 Cal.App.4th 512, 519.)

For example, in *Estate of Austin, supra*, 188 Cal.App.4th at pages 519-520, the court concluded the transferee was not a care custodian of her elderly neighbor based solely on her assistance of giving him rides to the doctor, preparing some meals for him, and generally helping out " 'wherever [she] could.' " In *Conservatorship of Davidson* (2003) 113 Cal.App.4th 1035, 1050 (*Davidson*), the court found no custodial care status for a transferee who performed unsophisticated errands and household tasks for a neighbor who was "essentially maintaining her independence" and who "basically took care of herself" with some assistance from a housekeeper.

In contrast, in *Estate of Odian* (2006) 145 Cal.App.4th 152, 167, the court concluded that a " 'paid live-in caregiver' " was a care custodian based on the fact that she lived with and took care of the elderly person, including cooking, cleaning, and driving her to appointments, meetings, and shopping. In *Bernard, supra*, 39 Cal.4th at pages 805-806, the court found custodial care status for two transferees who took care of all the daily needs of a dying woman, including preparing her meals, attending to her finances, and assisting visiting hospice staff with bathing and medical care. The *Bernard* court noted that the services provided by the transferees, including administration of morphine and wound care, were " 'a far cry' " from the "cooking, gardening, driving . . . to the doctor, running errands, grocery shopping, purchasing clothing or medications and

assisting . . . with banking" that occurred in *Davidson*. (*Bernard, supra*, 39 Cal.4th at p. 806.)⁸

On appeal, we review a trial court's findings of a custodial care relationship with a dependent adult for substantial evidence (*Estate of Austin, supra*, 188 Cal.App.4th at pp. 516, 520), and we independently review questions of statutory interpretation (*Estate of Odian, supra*, 145 Cal.App.4th at pp. 162-163). Reyes argues her appellate challenge to the custodial care finding raises purely a question of law subject to our de novo review. To the extent she is asserting that the " 'simple' " household-type services that she provided to Schmitt cannot, as a matter of law, suffice to establish custodial care social services, we disagree.

To support her position, Reyes notes that she was not a live-in caregiver; she did not administer Schmitt's medications or care physically for Schmitt's person; she did not assist Schmitt with activities of daily living (such as eating, grooming, and hygiene issues); she was not in charge of Schmitt's finances; and Schmitt was of sound mind. However, there is no rule that household-type services are necessarily insufficient to constitute custodial care social services under section 21350. In *Estate of Odian, supra*, 145 Cal.App.4th at pages 166-167, the court recognized "that the Legislature intended the

⁸ *Bernard* disapproved *Davidson* to the extent it held that an uncompensated, nonprofessional caregiver who was a personal friend of the dependent adult could not be a care custodian under section 21350. (*Bernard, supra*, 39 Cal.4th at pp. 810, 816, fn. 14.) However, when the Legislature rewrote the statutory scheme in 2010 (see fn. 7, *ante*), it added a provision stating that a care custodian does not include an unpaid person who had a statutorily-defined preexisting personal relationship with the dependent adult. (§ 21362, subd. (a).)

definition of 'care custodian' . . . to apply expansively to protect vulnerable elders," and concluded a live-in caregiver who performed such duties as cooking, cleaning, driving, and shopping was a care custodian. Considering the legislative purpose of protecting dependent adults from undue influence or other overbearing activity, the key inquiry is not whether the services are sophisticated, but whether they are essential to the dependent adult's well-being and place the dependent adult in a vulnerable position vis-à-vis the service provider.

In support of her claim that she cannot legally be characterized as a care custodian, Reyes cites the statement in *Bernard* where the court posited that the type of health care services provided by the caretakers in the case before it were a " 'far cry' " from the household-type services provided by the caretaker in the *Davidson* case. (*Bernard, supra*, 39 Cal.4th at p. 806.) This statement in *Bernard* does not suggest that household-type services as a *matter of law* cannot constitute custodial care. Further, the court in *Davidson* found that the transferor "basically took care of herself" with some assistance from a housekeeper who was *not* the transferee. (*Davidson, supra*, 113 Cal.App.4th at p. 1050.) The *Davidson* case likewise does not establish that the provision of simple household-type services necessarily precludes a finding of custodial care status in all cases. (See *Estate of Odian, supra*, 145 Cal.App.4th at p. 165.)

Here, given Schmitt's advanced age and the evidence showing that she was in large part physically confined to her home and that she relied on Reyes to take care of all the household needs essential to her survival and well-being (including shopping, meal preparation, errand running, and animal care), the trial court was not required to find as a

matter of law that Reyes was not a care custodian. We note that (although they do not govern this case) the Legislature has enacted new dependent adult statutory provisions that are consistent with our conclusion. (See fn. 7, *ante*.) The new statute states that health and social services means services "*including, but not limited to, the administration of medicine, medical testing, wound care, assistance with hygiene, companionship, housekeeping, shopping, cooking, and assistance with finances.*" (§ 21362, subd. (b), italics added.)

As an alternative argument, Reyes asserts the trial court erred in finding Schmitt was a dependent adult. In support, Reyes contends the trial court's finding that Schmitt was a dependent adult was based *solely* on Schmitt's entry into the hospital. Reyes claims that once Schmitt was in the hospital, any care services Reyes provided to Schmitt's person ceased and she only cared for Schmitt's pets. Thus, Reyes posits that Schmitt was not a dependent adult when Reyes was providing the purported social services, and once Schmitt became a dependent adult Reyes was no longer providing these social services.

In its final statement of decision the trial court did not find that Schmitt became a dependent adult only upon her entry into the hospital.⁹ Rather, the court found she was a dependent adult based on *both* her entry into the hospital *and* her condition prior to

⁹ Reyes cites the court's written tentative decision, in which it referred solely to Schmitt's hospitalization when finding dependent adult status. This tentative decision was not binding, and it is the court's final written statement of decision that is controlling. (Cal. Rules of Court, rule 3.1590(b).) We note additionally that in the court's tentative oral findings, it found that Schmitt was a dependent adult both before and during her hospitalization.

hospitalization. Regarding the latter, the court cited her failing health that began several years before her death, her vision problem, her inability to drive, and her confinement to her bed and/or house. These facts show that Schmitt met the definition of a dependent adult who "has physical . . . limitations . . . that restrict . . . her ability to carry out normal activities" (Welf. & Inst. Code, § 15610.23, subd. (a).) Further, the record supports the trial court's finding that Reyes continued her custodial care relationship with Schmitt after her hospitalization; i.e., Schmitt still relied on Reyes to take care of her home and animals, and to run errands related to her finances and home and animal caretaking.

Reyes's challenges to the court's care custodian and dependent adult findings are unavailing.

III. *Trial Court's Interpretation of the Clear and Convincing Proof Standard*

Reyes contends the judgment must be reversed because when considering whether she had rebutted the presumption of undue influence, the trial court imposed a burden of proof upon her that was higher than the clear and convincing standard.

Clear and convincing evidence " 'is an intermediate standard, between proof beyond a reasonable doubt and proof by a preponderance of the evidence' " (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.) Preponderance of the evidence requires a showing that the existence or nonexistence of the fact is more probable than not.

(*Tannehill v. Finch* (1986) 188 Cal.App.3d 224, 228.) Beyond a reasonable doubt requires an abiding conviction, although not the elimination of all possible or imaginary doubt. (*People v. Mabini, supra*, 92 Cal.App.4th at pp. 661-662; see also *People v. Garcia* (1975) 54 Cal.App.3d 61, 69 [beyond a reasonable doubt requires a moral

certainty, whereas preponderance of the evidence involves a weighing process to determine which evidence results in the greater probability].)

Between these two standards, clear and convincing evidence means evidence that establishes "a high probability of the existence [or nonexistence] of the disputed fact, greater than proof by a preponderance of the evidence." (*People v. Mabini, supra*, 92 Cal.App.4th at pp. 662-663; *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 318.) That is, "preponderance calls for probability, while clear and convincing proof demands a *high probability*." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899.) However, clear and convincing evidence does not require a case absolutely free from any doubt; rather the evidence should be such that the trier of fact is fully satisfied that the disputed fact has been proven. (See *Broadman v. Commission on Judicial Performance, supra*, 18 Cal.4th at p. 1090; *Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 445-446.)¹⁰

To support her contention that the trial court applied a standard that was higher than clear and convincing evidence, Reyes cites a statement by the court in its written

¹⁰ The clear and convincing standard has also been described as meaning " ' "so clear as to leave no substantial doubt"; "sufficiently strong to command the unhesitating assent of every reasonable mind." ' ' " (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.) However, the California Supreme Court has clarified that this language does *not* mean proof beyond a reasonable doubt, and the proper standard is high probability. (*Broadman v. Commission on Judicial Performance, supra*, 18 Cal.4th at p. 1090; see also *People v. Mabini, supra*, 92 Cal.App.4th at pp. 661-662.) The stronger language referring to the elimination of substantial doubt can elucidate the higher level of proof required for clear and convincing evidence, as opposed to the relatively slight evidence that can "tip the scales" and suffice for proof by a preponderance of evidence. (See *Sheehan v. Sullivan* (1899) 126 Cal. 189, 193; *Schumacher v. Bedford Truck Lines* (1957) 153 Cal.App.2d 287, 297-298.)

tentative decision before she requested a statement of decision. (See fn. 4, *ante*.) In this tentative decision, the trial court stated that Reyes was required to "negate the entire universe of possible undue influence." Reyes asserts the court articulated a "severely high standard" that is virtually impossible to meet, that exceeds the applicable high probability standard, and that arguably exceeds even the more stringent beyond a reasonable doubt standard.

The court's tentative decision was not binding and it cannot be used to impeach the court's final decision. (Cal. Rules of Court, rule 3.1590(b); *Taormino v. Denny* (1970) 1 Cal.3d 679, 684; *Distribu-Dor, Inc. v. Karadanis, supra*, 11 Cal.App.3d at p. 468.) However, we may consider the court's statements in the tentative decision to illuminate its reasoning processes in its final decision. (See *Chapple v. Big Bear Super Market No. 3, supra*, 108 Cal.App.3d at p. 874; *Distribu-Dor, Inc. v. Karadanis, supra*, 11 Cal.App.3d at p. 468.) When the court's statement in the tentative decision is read in context and in conjunction with the entire record, we are satisfied the court did not impose a burden on Reyes beyond the clear and convincing level of proof.

In the complained-of paragraph, the trial court stated: "Through section 21350, the legislature has imposed on a transferee a burden that Sisyphus would not envy. The transferee, who, by definition, is a person having close contact with the transferor, must produce clear and convincing evidence that the gift was not the result of undue influence. *To do this, the transferee must presumably negate the entire universe of possible undue influence. For purposes of this tentative decision, the court will focus on the most likely scenario under the facts at hand.*" (Italics added.)

The court then set forth its assessment that it was "possible, and not at all improbable" that Reyes told Schmitt she would cease caring for Schmitt's beloved animals unless a gift was made to her, which would have "played upon [Schmitt's] love of her animals in order to obtain a financial gift." It is clear the court's ruling was not premised on a finding that Reyes failed to negate all possible scenarios of undue influence. To the contrary, the court based its ruling on the fact that Reyes did not negate *one* scenario of undue influence that the court viewed as the "most likely" to have occurred given the facts of the case. Assuming arguendo that the trial court's reference to negating the "entire universe" of possible undue influence could, standing alone, be construed as requiring the elimination of all possible doubt, it is apparent this is not the standard that the court applied when making its ruling.

This conclusion is also supported by the trial court's oral statements when setting forth its tentative findings. The court repeatedly emphasized that the clear and convincing standard did not mean disproving "all scenarios" of undue influence, because this would be an impossible burden, and the standard only meant disproving "reasonably likely" scenarios.

The record does not show the court misunderstood the clear and convincing standard.

IV. Undue Influence

Finally, Reyes argues that the one example of possible undue influence cited by the court (i.e., that Reyes told Schmitt she would cease caring for the animals unless there was a transfer of assets) did not constitute undue influence. Reyes posits that if Schmitt

named Reyes as the beneficiary of the account to ensure her animals were taken care of in the future, this conduct did "nothing more than advance Schmitt's own will."

"[T]here can be no undue influence without an impairment of the free agency of the testator." (*In re Estate of Morcel* (1912) 162 Cal. 188, 195.) However, undue influence "can be exercised without any actual fraud or false representation." (34A Cal.Jur.3d (2008) Fraud & Deceit, § 2, p. 365; *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 182.) Undue influence exists when, due to the influence of another person, the transferor "make[s] a disposition of his property contrary to and different from what he would have done had he been permitted to follow his own inclination or judgment." (*Estate of Wright* (1963) 219 Cal.App.2d 164, 168-169.)

With respect to undue influence arising from the relationship of the parties, "[a] person does not have to be mentally incompetent or even weak-minded to repose confidence in another when the relationship justifies it." (*Kloehn v. Prendiville* (1957) 154 Cal.App.2d 156, 162.) When undue influence is presumed from the relationship of the parties, "the burden is cast upon the [transferee] . . . to show fairness and good faith in all respects." (*Johnson v. Clark* (1936) 7 Cal.2d 529, 534-535.) Absent such a showing, the presumption of undue influence prevails. (*Szekeres v. Reed* (1950) 96 Cal.App.2d 348, 356.)

Here, because Reyes was a care custodian of a dependent adult, the court was statutorily required to presume that Schmitt's transfer to Reyes was the result of undue influence. The burden was on Reyes to clearly and convincingly satisfy the court that there was no undue influence. On appeal, we review the trier of fact's finding that the

presumption of undue influence has not been rebutted for substantial evidence. (*Estate of Odian, supra*, 145 Cal.App.4th at p. 167.)

Because of Schmitt's dedication to her animals, and the fact that Schmitt's transfer to Reyes did not require use of the money for animal care, the trial court was legitimately concerned that Reyes may have said something to Schmitt that influenced her to transfer the money without tying it to the animal care. Nevertheless, if, as contended by Reyes on appeal, the facts conclusively showed that Schmitt's intent was carried out by the donative transfer, Reyes would have rebutted the presumption. However, the trial court was not required to reach this conclusion.

The record supports that Schmitt's primary concern and donative intent was focused on ensuring the care of her animals. Absent the creation of an instrument requiring that the money be used for the animals, Reyes could use the money for any purpose, which would not ensure effectuation of Schmitt's intent. Additionally, at trial Stokely testified that when she told Reyes about the money after Schmitt's death, she did not say it was for the care of the animals, and Reyes testified she did not view the gift as conditioned on animal care. Thus, the record does not show the transfer of money to Reyes was expressly or impliedly structured in a manner that would carry out Schmitt's intent.

Further, the witness testimony (from Stokely, Schmitt's friends, and Reyes herself) consistently reflected that Schmitt did *not* make statements indicating that she wanted to leave money for Reyes to take care of herself. There was no evidence affirmatively reflecting that if the animals were taken care of and there was money left over, Schmitt

wanted the balance of the money to go to Reyes. Rather, the evidence in the record merely showed that Schmitt wanted her animals to be taken care of, and she wanted Reyes to have enough money to do this.

The court was also entitled to draw inferences adverse to Reyes's good faith and credibility. On appeal, we defer to these factual resolutions. There was evidence showing that Reyes claimed ownership to Schmitt's house from a document that Reyes herself wrote and with an apparently forged signature. When Schmitt died, Stokely immediately told Reyes that Schmitt did *not* give her the house. Ignoring this information, Reyes exercised dominion over the house and claimed ownership when public administrator Saikhon arrived at the residence a few days after Schmitt's death. At trial, Reyes denied that she had shown Saikhon the letter and that she made a claim to the house, and her veracity was impeached by Saikhon's directly contradictory testimony.

In short, the record supports that the donative transfer was not guaranteed to carry out Schmitt's clear intent to take care of her animals; there was no evidence that Schmitt wanted to give money to Reyes for purposes other than the animal care; and Reyes engaged in conduct that called into question her good faith vis-à-vis the distribution of Schmitt's property. Considering all these circumstances, we reject Reyes's assertion that the trial court was required to find that the donative transfer effectuated Schmitt's intent so as to rebut the presumption of undue influence.

DISPOSITION

The judgment is affirmed. Parties to bear their own costs on appeal.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.