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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Conservatorship of the Person and Estate of
MARY VIRGINIA MELANSON.

CATHOLIC CHURCH EXTENSION
SOCIETY OF THE UNITED STATES OF
AMERICA,

Petitioner and Appellant,

v.

RALPH R. ZEHNER, as Conservator, etc.,
et al.,

Objectors and Respondents.

G049193

(Super. Ct. Nos. 30-2012-00559725,
30-2012-00569208)

O P I N I O N

Appeals from judgments of the Superior Court of Orange County, Richard W. Luesebrink, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Arent Fox, Stephen G. Larson, Debra J. Albin-Riley and Steven A. Haskins
for Petitioner and Appellant.

Law Offices of Keith Codron and Keith Codron for Objectors and
Respondents.

* * *

This appeal involves challenges to a trust and a subsequent conservatorship petition. Mary Virginia Melanson (Melanson) and her husband Martin formed the Martin A. Melanson and Mary V. Melanson revocable trust in 1994 (1994 trust). Melanson and Martin were the trustees. Catholic Church Extension Society of the United States (Extension Society), an Illinois not-for-profit corporation, was the beneficiary. Martin died in 2005. Melanson subsequently amended the trust making Extension Society cotrustee. On March 7, 2012, Melanson revoked the 1994 trust and created a new trust (2012 trust). Melanson named herself as trustee in the 2012 trust and named her nephew, Ralph Zehner, as the first successor trustee. The 2012 trust left all real property and 30 percent of the remaining assets in the trust to Zehner in the event of Melanson's death. The remaining 70 percent would go to Extension Society. Melanson subsequently amended the 2012 trust to make Zehner the sole beneficiary. Extension Society challenged Melanson's revocation of the 1994 trust.

Extension Society also filed a petition to establish a conservatorship over Melanson's person and estate, nominating a long time but then estranged friend of Melanson as the conservator of her person and a professional fiduciary as the conservator of the estate. Zehner also filed a petition for conservatorship requesting that he be named the conservator of Melanson and her estate. Extension Society opposed Zehner's petition. Melanson filed an opposition to Extension Society's conservatorship petition because she felt she did not need a conservator as Zehner was helping her and doing a good job at it. She did not want anyone other than Zehner having legal control over her property.

The trial court upheld the revocation of the 1994 trust, finding Zehner overcame the presumption of undue influence, and Melanson had testamentary capacity at the time she revoked the trust. The court also imposed a conservatorship over Melanson and named Zehner as the conservator of the person and estate. We affirm the judgments because they are supported by substantial evidence.

I

FACTS

We set forth the facts in compliance with the applicable standard of review. Extension Society is located in Chicago, Illinois. The Melansons had no children and began making donations to Extension Society 1984 and, over the next 25 years, gave Extension Society over \$1 million.

Georgia Anderson's duties at Extension Society were to establish planned gifts, such as trusts and annuities for its donors. She responded to all communications from those who had Extension Society in their estate plan. Anderson first spoke with the Melansons by telephone prior to 1992, and met them in 1993. Prior to Anderson's retirement in 2002, she maintained regular contact with the Melansons.

In 1994, Melanson asked Anderson to put into writing what Extension Society would do for them if they became incapacitated. Anderson wrote, stating Extension Society could arrange for the Melansons' "personal care and welfare" and had the ability to have custody of and maintain the Melansons' assets and pay their expenses. Melanson asked if Extension Society would be willing to serve as trustee of their trust. Anderson replied she would do anything to help them achieve their charitable goals.

On April 6, 1994, the Melansons created the 1994 trust. They named themselves trustees and provided Father Kenneth Velo of Extension Society would serve as successor trustee in the event they became incapacitated. During the Melansons' lives, the trustee would pay them the net proceeds from trust property on a regular basis. On the death of the surviving settlor, real property owned by the Melansons in Illinois would

go to Vincennes University Foundation and the remainder of their estate was to be left to Extension Society. Besides their home and the property in Illinois and Pittsburgh, the Melansons had four pieces of property with two rental units on each in Corona Del Mar and a substantial amount of money in certificates of deposit (CD's).

Each time Anderson visited the Melansons, Melanson brought up the possibility of becoming incapacitated. She appeared to be fearful of that eventuality. By 2001, she was concerned with being "forgetful" about making checkbook entries and wanted Anderson's assurance Extension Society would "take over as needed in this regard." The Melansons desired to stay in their home until they were unable to do so. In 2003, Melanson inquired of Anderson whether Extension Society should become involved in obtaining a property manager for them.

Martin died in February 2005. Melanson amended the 1994 trust in December of that year, revoking certain provisions and leaving the whole of her estate to Extension Society.

In 2008, Melanson, who was born in 1920, fell and suffered a head injury requiring hospitalization and recovery in a nursing care facility. While in the nursing care facility in January 2009, Melanson fell and broke her arm. She stated her desire to have Extension Society take over the role of cotrustee with her, rather than as successor trustee, and provided a "complete list" of her assets.

In March 2009, Melanson amended her trust to make Extension Society cotrustee. Thomas Gordon, the chief operating officer of Extension Society, came to California and met with Melanson to discuss Extension Society's responsibilities as cotrustee. Melanson said she wanted Extension Society to take over the day-to-day management of the rental properties, pay all her bills, and maintain detailed records of all her financial transactions. Melanson said she was concerned because she had made some errors in her checkbook in the preceding year and her housekeeper had used her credit cards, something she did not want to have happen again. Over the next three years,

Gordon visited Melanson 46 times. He said he noticed a cognitive decline in Melanson in early 2010, and she often did not remember his prior visit.

As time went on, however, Melanson told Gordon she was afraid Extension Society would put her in a nursing home. She voiced her concern on more than one occasion. In June of 2010, Gordon gave Melanson a monthly report and she said she was amazed he had the report. Melanson told him she had never seen one before. Gordon said he had given her monthly reports in the past. According to Gordon, Melanson said she had been hearing voices that Extension Society was stealing her money.

As early as 2010, Melanson also voiced concerns about the manner in which Extension Society was handling her assets. Until about 2009, Melanson had a monthly income of about \$20,000. The interest earned on the approximately \$1.5 million she had in CD's went down as the economy took a hit in 2009, and some of the CD's were then earning one-half a percent. At the same time, her expenses—she has two full-time caregivers—increased dramatically.

On Melanson's birthday in 2011, Gordon called her and asked her if she received the birthday gifts sent by Extension Society. She said she did, but she did not like them and she still thought Extension Society was stealing from her.

Zehner, Melanson's nephew, is retired. He said he has been involved with Melanson, and Martin while he was alive, for over 40 years. Once Martin died, Melanson started asking Zehner for assistance with maintaining her rentals, her automobile, with whether certain items are good deals or not, and in buying her blouses. He visited her two or three times a day when she was in the convalescent facility. For the three or four years preceding the trial in 2013, Zehner visited her daily and sometimes twice a day.

When Melanson left the convalescent facility after breaking her arm, she had trouble writing. She asked Zehner to write her checks. She did not, however, want him to balance her checkbook. She was afraid that if she lost her checkbook and check

register and someone found them and saw how much was in the account, they would clean out the account. Consequently, Zehner called the bank for her to keep close tabs on her checking account. The only checks he wrote were for bills, and Melanson knew what bills were being paid. Zehner has never written a check to himself on her account. In March 2010, Charles Stricklen, Melanson's attorney, notarized her grant of durable power of attorney for healthcare decisions to Zehner.

Zehner said he was at Melanson's house in 2010, when Gordon asked him what he thought of putting her in a nursing home. Gordon told Zehner that Melanson could rent out her home, increasing her income, and she could avoid the added expense of caregivers. Zehner told Gordon that Melanson wants to stay in her house, could afford to stay there, and "there's no way they're going to move her." When Zehner told Melanson that Extension Society and Michelle Allec—the conservator of the person nominated by Extension Society—were trying to convince her to go into a home, Zehner told Melanson he had her healthcare power of attorney and would not let that happen.

Melanson complained to Zehner about Extension Society spending her money as if it was theirs, not hers. She felt her assets were being mismanaged. She said every time she turns around Extension Society wanted to cash in one of her CD's. Zehner said Melanson is "old school" and did not want her CD's cashed in and her principal spent. According to Zehner, Melanson is "tight-fisted." She was also irritated that two of her rental units were vacant for six months. When she and Martin managed the rentals, they never had a vacancy. Melanson told Zehner she originally thought it was a good idea to make Extension Society a trustee, as she thought it was a good organization, but she changed her mind after Extensions Society made changes to its board.

When Melanson asked Zehner about financial advice, he told her to talk to Stricklen, her attorney. She responded, "Well, I can't get a straight answer out of [him]."

Zehner then told her to look in a phone book and pick out another attorney who practices elder care.

Zehner said Melanson has memory problems at times and at other times she does not. He said her memory improved after she left the convalescent facility. According to Zehner, her memory loss has remained the same over the last couple of years.

As to the need for a conservatorship, Zehner said Melanson is unable to manage her assets without assistance. He added that she does a “pretty good job” of telling him what she wants done and she keeps track of everything. As of trial in March 2013, it had been about a year since Melanson paid her own bills and conducted her own banking activity. She reviews her rent receipts, instructs Zehner to deposit them, and tells him what bills to pay.

In 2012, Melanson made an appointment to meet with Stricklen. He had been her attorney for five to seven years and had drafted trust amendments, including the modification naming Extension Society cotrustee of the 1994 trust. Zehner did not drive Melanson to the appointment, but he did meet her there. Melanson told Stricklen she wanted to make changes to her estate plan. She wanted to put Zehner on the trust. Zehner testified the request surprised him. Stricklen refused. He not only did not believe her decisionmaking process was cogent, he thought Zehner was imposing his will on Melanson.

After the meeting, Melanson was upset Stricklen would not make any changes to the trust. She had been attempting to make changes for about a year, but Stricklen kept putting her off. Melanson asked Zehner if he knew of an attorney. He told her to look in the telephone book and “just pick one.” Melanson went to see Attorney Kathleen Hinton-Braaten. Zehner did not select Hinton-Braaten and only found out about the appointment after Melanson met with her. Although there is no explanation in the record why she did not return, Melanson saw Hinton-Braaten only once.

A week or so later, Melanson said she was going to get a new trust and “get rid of” Extension Society. She said she “was done” with Stricklen. Zehner said he never suggested he be named cotrustee or made a beneficiary of her trust.

Leslie Daff is an attorney who specializes in estate planning and administration. Although Melanson called her to make an appointment with her, Daff believes she first spoke to Zehner. Daff met with Melanson at her office in Irvine. Zehner and Melanson’s caregivers were there. Daff first spoke with Melanson with everyone in the room and then asked Zehner and the caregivers to leave the room so she could speak with Melanson confidentially. Daff wanted to make sure the changes to Melanson’s estate plan were the result of her free will. Daff was impressed with Melanson, who made jokes and said she was slower than she used to be but that things eventually came to her. Daff said Melanson was coherent and logical. After speaking with Melanson alone, Daff was convinced Melanson was acting on her own volition and had testamentary capacity to make the changes.

Rather than draft the changes herself, she called in Attorney Keith Codron, who was in the same building. She did so because Zehner showed her a letter accusing him of changing Melanson’s medication,¹ and Daff did not want to get involved if it meant she might be sued. Consequently, Daff thought any change to the estate plan should be made by a litigator, and she does not “do litigation.”

Codron is not associated with Daff. He said Daff is not a litigator and when an older person changes his or her estate plan, the odds are more likely the result will be litigation than when a younger person alters an estate plan.

¹ Presumably, the letter was the January 19, 2012 letter from Stricklen to Zehner, accusing him of firing one of Melanson’s caregivers for informing Stricklen that Zehner changed Melanson’s dosage of a medication. In December 2011, Melanson’s physician had reduced the dosage for a two-week period, at the end of which Melanson was cleared to stop taking the drug altogether.

Melanson repeatedly told Codron she wanted to “be through” with Extension Society. She said Extension Society was being intrusive and had too much control over her money. Melanson told Codron that Zehner was her nephew and she wanted to leave her estate to him. Codron agreed to provide his legal services because Melanson appeared competent, knew exactly what she wanted to do, was coherent, and was “quite strong” in her opinions. Melanson told Codron during their first meeting he should feel free to discuss financial matters with Zehner. Codron said it was clear Melanson had “very negative” feelings about Extension Society and “warm feelings” about Zehner.

Codron had a number of meetings with Melanson and asked her the same questions at each meeting to see if she was consistent in her stated wishes. The purpose was to test her competence. He prepared the 2012 trust, a modification to that trust, a durable power of attorney and an advanced health care directive, all of which were signed in his presence. He also prepared deeds transferring Melanson’s property into the 2012 trust. The initial version of the 2012 trust left Extension Society with 70 percent of Melanson’s cash assets, however, Melanson was “very taken aback, . . . sad,” and “angry” when Extension Society filed its petition to challenge the validity of her revocation of the 1994 trust. After it filed the conservatorship petition, Melanson directed Codron to make Zehner her sole beneficiary.

When Zehner filed a conservatorship petition after Extension Society filed its conservatorship petition, Codron discussed the matter with Melanson. She was not upset about Zehner’s petition, but she was fearful about anyone other than Zehner having control over her assets and did not want Allec, a former friend, to be conservator.

Codron’s meetings with Melanson did not involve Zehner or the caregivers. He said Melanson is strong willed and he does not think she takes advice easily. During his meetings with Melanson, she was “mentally better” than she was at trial, and “no alarm bells” went off about a lack of testamentary capacity. Codron said “she knew what

she wanted,” and he would not have made changes if it appeared she was delusional or being controlled by someone.

Dr. Vicki Crowe has been Melanson’s physician for at least 20 years. Melanson made an appointment with Crowe in late December 2011 to review her medications. She had a long history of concern about her medications and their side effects. In past years, Melanson stopped three different osteoporosis medications because of side effects. She did not like being on unnecessary medications.

On this occasion she complained about feeling sleepy and thought it was from the Dilantin she had been prescribed. Dilantin is a seizure control medication. She had been taking Dilantin three times a day. Crowe said Melanson had not had a seizure since 1997, was not at a high risk of having a seizure, and there comes a time to reduce or stop taking the medication. She ordered a blood test and when the results came back she ordered the dosage reduced. Melanson was happy with the result.

Crowe examined Melanson on April 4, 2012, to evaluate her “mental capacity.” Melanson said she was changing her estate plan regarding charitable contributions because of a lack of trust, but not changing any aspects regarding her sole family beneficiary, her nephew. As usual, Melanson appeared with her two caregivers. Zehner was not with her, but Melanson gave Crowe authority to speak with him.

Crowe said she has seen “a lot of elderly people” in her 25 years of medical practice. She stated Melanson conveyed her needs, listened to her and answered appropriately to questions, followed through with directions and did not exhibit any hallucinations or delusions. Crowe concluded Melanson had testamentary capacity. On the form attesting to Melanson’s testamentary capacity, Crowe documented Melanson’s hearing impairment.

Dr. Stephen Read specializes in geriatric psychiatry. He visited Melanson on June 9, 2012, to determine if she had testamentary capacity at the time she revoked the 1994 trust. Melanson was alert, motivated, responsive, and demonstrated early on that

she knew why he was there. She recalled the changes she made in her estate plan, stated her reasons for doing so, and conveyed a sense of purpose. Melanson told him she had a previous estate plan and decided to scrap it. She said she had come to rely on her nephew, Zehner. She spoke very highly of him and indicated she had designated him as her agent of choice for purposes of an advanced healthcare directive and power of attorney. The fact that she remembered that commitment impressed Read. Melanson said she had had been involved with “the Society” and was frustrated with it.

Read observed no delusions during his visit and no indications of hallucinations. He added: “She was also—she made a distinction that I found important in terms of her understanding, which was that . . . she did not actually remember being in the hospital or in the nursing home. That she had been seriously impaired. That was her estimate, that she had been seriously impaired. And she credited Mr. Zehner’s attentions during this episode and then subsequently, that his making sure that everything was taken care of was a key factor in getting her out of the nursing home, which is what she very much desired. And that his continued attentions on essentially a daily basis ensured that she got what she needed, that things were taken care of. [¶] And her clear primary motivation was to stay in her house until the end of her life. She commented that she had come to trust Mr. Zehner and come to realize that she could rely on him, and therefore, chose to do that. And that that was the basis for her making these changes.” Second to her desire to remain in her home was the fact that her husband, when he was alive, had worked hard to accumulate her properties and resources, and she felt Extension Society was trying to control her money. She knew the extent of her investments. Read added that people who express a desire to keep control of their money, like Melanson, are generally less susceptible to undue influence. Read said Melanson’s distrust of Extension Society was linked to her unhappiness with Stricklen.

Melanson said her husband had been Catholic. Read asked her about her religion and she said she probably was too. Although Read was prepared to talk about Catholicism, given Extension Society's "centrality" in these matters, Melanson was not interested in it.

Read said Melanson had some word finding difficulties, but her vocabulary, syntax, and ability to express her mind impressed him. He found she was "fully capable of engaging in a meaningful dialogue." She clearly understood she chose to have her property pass to Zehner upon her demise.

Read asked Melanson about Allec, the individual Extension Society nominated as conservator of Melanson's person. Melanson said they had been friends, but the friendship had soured.

Read visited Melanson again in December 2012. She was alert and attentive throughout the interview. He was impressed that Melanson asked questions of him. She was concerned about any "deal" being made without her agreeing to it. When Read mentioned it would be difficult for her to go to court, she said her attorney could help her prepare for court. She was annoyed that her actions had been called into question when what had been done was what she wanted. She told him, "I did this. I know what I did. I don't understand what all the fuss is about." Melanson affirmed her designation of Zehner and said it was what she wanted.

During the first visit, Melanson tested as having moderate dementia. She tested better on the subsequent visit. And although memory impairment makes one more vulnerable to undue influence, Read said Melanson "to a very significant extent, retained the ability to know her mind." Read concluded Melanson had the requisite mental capacity to complete testamentary documents in March 2012. He also cautioned that in a courtroom setting a person with a hearing impediment might be thought to have more

severe dementia that actually exists.²

Dr. David J. Sheffner, was retained by Extension Society to render an expert opinion as to Melanson's testamentary capacity. He consulted with her on November 27, 2012. When he asked her what she would say if her attorney told her he needed to borrow \$25,000 because of financial problems, she said she would not give him any money and "there are banks that do that kind of thing." Sheffner asked what she would do if her attorney said he was in financial trouble and needed to double his hourly rate. She said she would "get rid of him." When the doctor asked her if he told her he had a great investment in Chinese bonds and if she gave him \$10,000 today and she would get back \$20,000 in two weeks, she asked, "How gullible do you think I am?" She asked if it was because she is a woman and a widow. And when asked what she would do if Zehner said he needed \$200,000, she said, "Again, that's what banks are for," and that she would not give him the money.

Sheffner also spoke with Allec, Gordon, and the attorney for Extension Society. He concluded Melanson suffers from progressive cognitive decline secondary to dementia, and that in March 2012, when she revoked the 1994 trust and created the 2012 trust, she could understand the nature of the testamentary act, but she devised property in a manner she would not have done except as the result of delusional hallucination—that Extension Society was stealing from her.

The Judgments

The court found a presumption of undue influence by Zehner existed, but Zehner overcame the presumption. The court further found Melanson had testamentary

² Extension Society had previously called Melanson as a witness. She testified briefly before the court stated it was not satisfied there was a sufficient "showing of competency at the present time" and authorized the use of her deposition testimony. The lack of competency was based on her "hearing deficit."

capacity and her revocation of the 1994 trust was not the result of delusions or hallucinations. The court concluded Melanson's revocation of the 1994 trust and the issuance of grant deeds to the 2012 trust were valid. In the trust matter, the court found Melanson was unable to provide for her personal needs without assistance and it was in her best interests to appoint Zehner as the conservator of her person and estate.

II

DISCUSSION

Extension Society appeals from the judgments in the trust and conservatorship matters. In connection with the trust matter, Extension Society contends Melanson's revocation of the 1994 trust, wherein it was the beneficiary, was the result of Zehner's undue influence. It further argues Melanson lacked testamentary capacity at the time she revoked the 1994 trust. On appeal from the conservatorship matter, Extension Society does not contend a conservator should not have been established, but rather that Zehner should not have been made Melanson's conservator.

A. *Standard of Review*

The issue in each matter is whether the judgment is supported by the evidence. (*Estate of Williams* (2007) 155 Cal.App.4th 197, 211 [testamentary intent reviewed under substantial evidence standard]; *Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401 [substantial evidence standard in conservatorship matter].) "Under the substantial evidence standard of review, we review the entire record to determine whether there is substantial evidence supporting the [trier of fact's] factual determinations [citation], viewing the evidence and resolving all evidentiary conflicts in favor of the prevailing party and indulging all reasonable inferences to uphold the judgment [citation]. The issue is not whether there is evidence in the record to support a different finding, but whether there is some evidence that, if believed, would support the findings of the trier of fact. [Citation.] Credibility is an issue of fact for the trier of fact

to resolve [citation], and the testimony of a single witness, *even a party*, is sufficient to provide substantial evidence to support a factual finding [citation].” (*Fariba v. Dealer Services Corp.* (2009) 178 Cal.App.4th 156, 170-171, italics added.)

“[T]he weight and persuasiveness of the evidence is a matter exclusively for the trier of fact” (*Estate of Odian* (2006) 145 Cal.App.4th 152, 168.) Generally, we look only to the evidence and reasonable inferences supporting the court’s decision and ignore contrary evidence and inferences. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) Consequently, “even if the judgment of the trial court is against the weight of the evidence, we are bound to uphold it so long as the record is free from prejudicial error and the judgment is supported by evidence which is ‘substantial,’ that is, of “ponderable legal significance,” “reasonable in nature, credible, and of solid value. . . .” [Citations.]” (*Ibid.*) Lastly, “[w]e affirm the judgment if it is correct . . . regardless of the trial court’s stated reasons. [Citation.]’ [Citation.]” (*Law Offices of Mathew Higbee v. Expungement Assistance Services* (2013) 214 Cal.App.4th 544, 551.)

B. *The Trust Matter*

1. *Undue Influence*

A testamentary document obtained as the result of undue influence will negate the testamentary act. (*David v. Hermann* (2005) 129 Cal.App.4th 672, 684; Prob. Code, § 6104 [will obtained by undue influence is ineffective].) Extension Society claims Zehner did not overcome the presumption of undue influence in the revocation of the 1994 trust.

“Undue influence is pressure brought to bear directly on the testamentary act, sufficient to overcome the testator’s free will, amounting in effect to coercion destroying the testator’s free agency.” (*Rice v. Clark* (2002) 28 Cal.4th 89, 96.) Direct proof of undue influence is “rarely obtainable” and consequently is established circumstantially. (*Estate of Hannam* (1951) 106 Cal.App.2d 782, 786.) “The proof of

undue influence by circumstantial evidence usually requires a showing of a number of factors which, in combination, justify the inference, but which taken individually and alone are not sufficient.’ [Citation.] Among the indicia of undue influence is evidence that “‘the chief beneficiaries under the will were active in procuring the instrument to be executed.’” [Citations.] While the person challenging the testamentary instrument ordinarily has the burden of proving undue influence, ‘under certain narrow circumstances, a presumption of undue influence may arise, shifting to the proponent of the disposition the burden of proving by a preponderance of the evidence that the donative instrument was *not* procured by undue influence.’ [Citation.] Evidence that the beneficiary procured the testamentary instrument is one of three circumstances required to create this presumption. A presumption of undue influence ‘arises upon the challenger’s showing that (1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in procuring the instrument’s preparation or execution; and (3) the person would benefit unduly by the testamentary instrument.’ [Citations.]” (*David v. Hermann, supra*, 129 Cal.App.4th at p. 684.) Once the presumption attached, the burden shifted to Zehner to rebut the presumption. (See *Bernard v. Foley* (2006) 39 Cal.4th 794, 800 [presumption created by Probate Code section 21350 shifts the burden of proof].)

Assuming, without deciding, the court properly found the presumption of undue influence applied in this matter, Zehner rebutted the presumption, as the court also found. Years before she revoked the 1994 trust wherein Extension Society was cotrustee and the sole beneficiary of her estate, Melanson’s feelings about Extension Society changed. She did not like the manner in which her rental units were being overseen by Extension Society. She complained about having two long-term vacancies when she and her husband had never had a vacancy when they managed the rentals. Additionally, she was worried Extension Society would put her in a convalescent facility. As previously noted, Zehner testified Gordon asked him in 2010, what he thought about placing

Melanson in such a facility. Zehner relayed that information to Melanson and told her it would not happen because he had her power of attorney.

Melanson made statements to others, notably the doctors who questioned her, that revoking the 1994 trust in which Extension Society was cotrustee and the sole beneficiary and revoking that portion of her 2012 trust leaving 70 percent of her cash assets to Extension Society was *her* desire. It appears the later action was the result of the anger and frustration she felt when Extension Society challenged her revocation of the 1994 trust and petitioned to establish a conservatorship over her.

Although there had been a time when Melanson wanted Extension Society to act as trustee because she did not believe she had any friends or relatives who were capable of handling her financial affairs, she subsequently came to believe Zehner could. Her income from rentals increased and Zehner paid her bills as she directed.

Zehner drove Melanson to one or more appointments with attorneys, but her initial appointment with an attorney to change her trust was with Stricklen, and defendant did not drive her there. Moreover, Zehner testified he did not know Melanson intended to have Stricklen change her trust. When Stricklen refused to do as Melanson asked, she complained to Zehner and he suggested she find another attorney. Melanson next went to see Attorney Hinton-Braaten. Zehner did not know Melanson had made an appointment with Hinton-Braaten and only found out about it after Melanson had met with her. This evidence tends to negate any inference Zehner was actively participating in the forthcoming changes in Melanson's estate plan.

And while Extension Society claims Zehner manipulated Melanson so the "entire estate—some \$7 million" went to him alone, the truth of the matter is that even after Melanson revoked the 1994 trust, she still provided Extension Society would receive 70 percent (possibly over \$1 million) of her substantial cash assets upon her death. It was only when Extension Society brought a petition challenging her decision

that Melanson became angry, hurt and decided that if that is how it was going to be, Extension Society would get nothing.

As far as any undue benefit is concerned, Zehner was Melanson's only relative with whom she had contact. Since Martin's death, she relied on Zehner more and more. When she was recovering from her fall, head injury, and broken arm, he regularly visited her. Once she returned home, he visited her every day and sometimes twice a day when she called him for additional assistance. At her request, he prepared checks for her to sign. While he had not been named as a beneficiary when Extension Society was Melanson's sole beneficiary, given her subsequent loss of esteem for Extension Society, it cannot be said the benefit she conferred on him was undue.

The trial court heard the evidence and observed the witnesses. It was the court's job to "resolve conflicts in the evidence and to judge the credibility of the witnesses. [Citation.]" (*Orange County Flood Control Dist. v. Sunny Crest Dairy, Inc.* (1978) 77 Cal.App.3d 742, 758.) It found Zehner rebutted the presumption of undue influence. Substantial evidence supports the court's decision.

Zehner claims the court erred in finding a presumption of undue influence. However, as substantial evidence supports the court's concomitant finding that Zehner overcame the presumption and the revocation of the 1994 trust was valid, we need not address Zehner's argument. (See *Estate of Beard* (1999) 71 Cal.App.4th 753, 776 [if the trial court's decision is correct, it is to be affirmed regardless of the court's reasoning].)

2. Testamentary Capacity

Probate Code section 6100.5 refers to two components of testamentary capacity in the context of making a will. It provides an individual lacks testamentary capacity if she "does not have sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual's property, or (C) remember and understand the individual's relations to living

descendants, spouse, and parents, and those whose interests are affected by the will.” (Prob. Code, § 6100.5, subd. (a)(1).) An individual may also lack testamentary capacity if she “suffers from a mental disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in the individual’s devising property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.” (Prob. Code, § 6100.5, subd. (a)(2).) Although the terms of Probate Code section 6100.5 purport to apply only to the making of a will, its provisions also apply for purposes of determining whether a trustor had the capacity to make or amend a trust. (*Anderson v. Hunt* (2011) 196 Cal.App.4th 722, 731.)

Substantial evidence supports the trial court’s finding Melanson had testamentary capacity to revoke the 1994 trust and to amend the 2012 trust. While Melanson suffered from delusions and hallucinations from time to time, Dr. Read did not observe any during his examination of Melanson. He said she was motivated, alert, and responsive. She knew what she had done when she revoked the 1994 trust and amended the 2012 trust. She was well aware of her prior estate plan and told Read she decided to scrap it. Moreover, she gave her reasons for making the changes.

Read said Melanson was aware of her prior hospitalization and said she knew she had been seriously impaired at that time. She also credited Zehner for the assistance he gave her during that period of time and in making sure she left the convalescent facility and returned to her home—her goal being to live out her life in her own home. The fact that the parties stipulated Melanson told another of her nephews, Dan Mathers, in February 2012, that Extension Society was attempting to place her “in a nursing home,” but Extension Society was not attempting to do so, does not mean Gordon did not discuss the matter with Zehner or that Melanson’s appreciation of Zehner’s effort to have her remain in her home was based on a delusion.

Melanson knew what Read was asked her and made it clear *she* chose Zehner because she had come to trust him, whereas she felt communication with Gordon and Extension Society had not been adequate. With Extension Society as trustee, Melanson felt she had lost control over her money. She apparently felt no such concern with directing Zehner as to the bills to be paid and the deposits to be made. Additionally, Melanson knew what her investments were, pointing in the direction of some of her rentals and specifically referring to her CD's.

Read opined she had testamentary capacity in March 2012, when she acted in connection with trusts. So did Melanson's longtime physician, who examined her in April 2012. Melanson did not exhibit any delusions or hallucinations when Dr. Crowe examined her. Melanson explained the reason for changing her estate plan. It was based on her lack of trust in Extension Society. Crowe said she found no reason to conclude Melanson lacked capacity. Additionally, Attorneys Daff and Codron concluded she had testamentary capacity.

This evidence supported a reasonable inference Melanson understood the "nature and situation" of her property, the nature of the testamentary act, her relation to Zehner, and her past relationship with Extension Society (Prob. Code, § 6100.5, subd. (a)(1)), as well as a reasonable inference she did not revoke the 1994 trust or amend the 2012 trust based on a delusion or hallucination (Prob. Code, § 6100.5, subd. (a)(2)).

3. *Conclusion*

The evidence in this matter was conflicting. Had the court found the 1994 trust was revoked as the result of the presumption of undue influence or because Melanson lacked the capacity to revoke the trust, there may have been sufficient evidence to support such a decision. But the court did not find in Extension Society's favor, and there was substantial evidence supporting the court's decision in favor of Zehner.

C. The Conservatorship Matter

As stated above, the court also found it appropriate to appoint a conservator for Melanson. In appointing Zehner as Melanson’s conservator, the court found its action was in Melanson’s best interest, “for the court always must act in the proposed conservatee’s best interests in selecting a conservator. [Citations.]” (*Conservatorship of Ramirez, supra*, 90 Cal.App.4th at p. 401.) Extension Society does not contend the court erred in establishing a conservatorship, only in appointing Zehner as the conservator over the conservators it nominated. Indeed, its sole argument is that Zehner did not overcome the presumption of undue influence and, therefore, he should not have been appointed Melanson’s conservator. We reject Extension Society’s contention as we have found any presumption of undue influence was overcome.

III

DISPOSITION

The judgments are affirmed. Zehner shall recover his costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.