

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOAN MAURI BAREFOOT,
Petitioner and Appellant,

v.

JANA SUSAN JENNINGS et al.,
Defendants and Respondents.

Supreme Court
No. S251574

Court of Appeal
No. F076395

Superior Court
No. PR11414

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

Honorable Kate Powell Segerstrom, Judge

REPLY TO ANSWER TO PETITION FOR REVIEW

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

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

Attorney for Petitioner and Appellant
Joan Mauri Barefoot

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No. PR11414

**REPLY TO ANSWER TO PETITION FOR
REVIEW**

**After the Published Decision of the Court of Appeal, Fifth Appellate
District Affirming the Order Dismissing Appellants Petition for Lack
of Standing**

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant Joan Mauri Barefoot respectfully submits this reply to
Respondent's answer to petition for review.

WHY REVIEW SHOULD BE GRANTED

The issues presented in this case, issues that affect trust litigation and the victims of undue influence throughout the state of California, are important legal questions deserving this Court's review. Appellant submits the following reply to the arguments in Respondent's answer.

ARGUMENT

I. **RESPONDENTS AND THE FIFTH APPELLATE DISTRICT ERRONEOUSLY AND IMPERMISSIBLY ADDED THE WORD "ONLY" TO PROBATE CODE SECTION 17200(a).**

Respondent's argue that California Probate Code Section 17200(a) was specifically drafted to provide rights "only" to a trustee or a beneficiary of the most current iteration of the trust. Section 17200(a) does not contain the word "only" as alleged by Respondents. Courts do not have the power to add words to a statute to conform it to an assumed intent that does not appear from the statute's actual language. (*People v. Eckard* (2011) 195 Cal.App.4th 1241, 1249). Respondents and the Fifth Appellate District added the word "only" to Section 17200(a) despite the fact that the Legislature did not include the word "only" in the code section. Section 17200(a) reads, "a trustee **or** beneficiary of a trust **may** petition the court under this chapter." (Emphasis added). The Legislature did not include any language in Section 17200(a) that expressly limits standing to only trustees and beneficiaries. The Legislature simply cites two classes of individuals that may file a petition under Section 17200(a). There is no language in

Section 17200(a) that indicates the Legislature intended to specifically exclude any groups of people from seeking relief under Section 17200(a). This stands to reason because Section 17200(a) authorizes individuals who are not yet beneficiaries to file a petition to determine the existence of a trust. There are technically no beneficiaries if no trust exists prior to the filing of a petition to determine the existence of a trust under Section 17200(a). If the Fifth Appellate District's reasoning is applied literally no party would have standing to petition to determine the existence of a trust under Section 17200(a). Therefore, the Fifth Appellate District's interpretation of Section 17200(a) does not stand to reason.

The thrust of Respondent's main argument is that the Legislature drafted Section 17200(a) to intentionally exclude anyone other than trustees and beneficiaries under the latest iteration of the trust. Respondents don't cite any legislative notes, history or other authority to evidence the Legislature's intent to expressly limit standing to only beneficiaries and trustees under the most recent iteration of the trust. If the Legislature intended to limit standing to only beneficiaries and trustees of the latest iteration of the trust the Legislature could have expressly stated so. However, they did not. The Legislature instead drafted a code section that allowed for fluidity. As discussed below, one of the hallmarks of the probate code is fluidity with regards to standing. Also discussed below is

the fact that standing is a federal concept and that there is no correlating state standing requirement.

II. THE FIFTH APPELLATE DISTRICT'S INTERPRETATION OF SECTION 17200(a) IS CAVALIER BECAUSE THE COURT TOOK THE CODE SECTION OUT OF CONTEXT AND FAILED TO HARMONIZE SECTION 17200(a) WITH THE ENTIRE STATUTORY SCHEME.

Respondents argue that because the plain meaning is clear the plain meaning rule applies. However, the plain meaning rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with the other provisions of the statute. (*Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 592-593). The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context and provisions relating to the same subject matter must be harmonized to the extent possible. (*Id.* at 592). Each sentence must be read not in isolation but in light of the statutory scheme and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. (*Id.* at 592-593). The Fifth Appellate District's interpretation of Section 17200(a) creates disharmony between various probate code sections. For example, as discussed above, Section 17200(a) states that a petition may be brought to determine the existence of a trust. There are no present beneficiaries if

the trust doesn't exist prior to the filing of a petition to determine the existence of the trust under Section 17200(a). If the Fifth Appellate District's reasoning is applied literally then no individuals have standing to file a petition to determine the existence of a trust.

Literal construction should not prevail if it's contrary to the legislative intent apparent in the statute. (*Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 659). The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735). An interpretation that renders related provisions nugatory must be avoided. (*Id.* at 735).

Below is discussion regarding the various code sections related to Section 17200(a). Throughout the discussion below it will become clear that when Section 17200(a) is interpreted in the context of the entire statutory scheme beneficiaries disinherited by a later amendment or restatement have standing under 17200(a).

A. PROBATE CODE SECTION 24(c)

Probate Code Section 24(c) defines a beneficiary as a person to whom a donative transfer of property is made, and, as it relates to a trust, means a person who has any present or future interest, vested or contingent. This code section is expansive because it defines beneficiaries as beneficiaries with both present and future interests as well as vested or

contingent interests. In other words, Section 24(c) includes both current and potential beneficiaries. For example, a beneficiary of a revocable living trust with no vested rights and whose interest could be revoked at an time is still defined as a beneficiary under Section 24(c). There is nothing in Section 24(c) that indicates that the Legislature intended to expressly limit the definition of trust beneficiaries to only beneficiaries under the most current iteration of the trust. In fact, the definition under Section 24(c) is expansive and includes both current and potential beneficiaries.

B. PROBATE CODE SECTION 16061.7

Probate Code Section 16061.7(a)(1) and (b)(1)-(2) require that notice of the irrevocability of the trust instrument be given to heirs at law of the deceased trustor as well as beneficiaries and trustees named in trust instrument. Section 16061.7(h) also requires that these individuals be given specific warning that they cannot bring an action to contest the trust more than 120 days from the date of the notification. The Fifth Appellate District's decision expressly bars the very persons to whom statutory notice of the right to bring an action to contest the trust for a limited period of time must be given from bringing an action to contest the trust under Section 17200(a) unless they are still specifically named as a beneficiary. When the Legislature added the requirement that trustees notify heirs as well as beneficiaries of the settlor's death and set an 120-day time limit for contests

after service of notification (Prob. Code 16061.5, 16061.7 and 16061.8) the Legislature could not have intended that heirs who were not named as beneficiaries lacked standing.

C. PROBATE CODE SECTION 84.

Probate Code Section 84 states that a “Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The Fifth Appellate District’s decision creates disharmony with Section 84 because a formerly named trustee, or original trustee, is deemed to be a trustee under Section 84. A formerly named trustee, or original trustee, should therefore have standing under Section 17200(a). For example, Appellant was formerly named as trustee of the trust at issue. Therefore, Appellant has standing under Section 17200(a) because she was a formerly named trustee, or original trustee, under prior instruments whether or not appointed or confirmed by a court.

D. PROBATE CODE SECTION 48

Probate Code Section 48 defines interested persons. Although Probate Code Section 48 is not directly related to Section 17200(a) because 17200(a) does not require standing as defined by Section 48, Section 48 helps to put Section 17200(a) in context. Probate Code 48(a)(1) states that an interested person is an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust

estate or the estate of a decedent which may be affected by the proceeding. Section 48(b) further expands the definition of interested person by stating that the meaning of interested person as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in any proceeding. Essentially, any individual that may stand to gain from the estate or trust has standing as an interested person under Section 48. Section 48 is the quintessential probate code section with regards to standing because it exemplifies the Legislature's intent to permit any individual whose pecuniary interests may have been harmed to bring a claim.

E. PROBATE CODE SECTIONS 1040 AND 1043(a)

Probate Code Section 1040 governs all hearings under the probate code. Probate Code Section 1043(a) provides that an interested person may appear and make a response or objection in writing at or before the hearing. These sections are expansive in that they allow any party to appear and object at or before the hearing. These expansive code sections demonstrate the Legislature's intent to allow any party whose interests may be harmed by the proceeding to appear and be heard.

F. PROBATE CODE SECTIONS 17000(b)(1) AND 17001

California Probate Code 17000(b)(1) states that the superior court having jurisdiction over the trust pursuant to this part has concurrent

jurisdiction over actions and proceedings to determine the existence of trusts and other actions and proceedings involving trustees and third persons. Section 17001 states that in proceedings commenced pursuant to this division, the court is a court of general jurisdiction and has all the powers of the superior court. The Fifth Appellate District's decision is in direct contradiction to Sections 17000(b)(1) and 17001 because both sections demonstrate the Legislature's intent to permit the probate court to hear any claims brought before it. Furthermore, Section 17000(b)(3) states that the superior court having jurisdiction over the trust pursuant to this part has concurrent jurisdiction over actions and proceedings involving trustees and third persons. The Fifth Appellate District's decision could be deemed to render Section 17000(b)(3) nugatory. For example, the Fifth Appellate District states that beneficiaries disinherited by a later iteration of the trust are third persons with no interest in the trust. The Fifth Appellate District therefore reasons that these third parties have no standing under Section 17200(a). However, Section 17000(b)(3) grants the probate court authority to hear claims by third persons against the trust. Supreme Court review is necessary to ensure that Section 17200(a) is harmonized within the context of the entire statutory scheme.

Finally, if a court determines that it is not the appropriate forum or division of the court to hear a case, the court should transfer the matter to

the appropriate court or division. Code Civ. Proc. 396. Therefore, the Fifth Appellate District should have remanded this matter to the trial court with instructions to transfer the matter to the appropriate court or division.

**III. THE FIFTH APPELLATE DISTRICT'S OPINION
CREATES CONTROVERSY AMONGST DECISIONAL
AUTHORITY.**

The Fifth Appellate District's decision flies in the face of decades old case law that that explicitly confers standing upon non-beneficiary heirs. *Olson v. Toy* confirms that standing is conveyed to heirs to directly challenge the validity or existence of the trust. (*Olson v. Toy* (1996) 46 Cal.App.4th 818, 823). The heirs in *Olson v. Toy* filed a complaint for declaratory relief, to impose constructive trust, and to recover damages where the decedent executed an inter vivos trust that did not include the contesting heirs. (*Id.* at 821). The trial court dismissed for lack of standing. (*Id.*) The Third Appellate District reversed the dismissal and held that the heirs did have standing under Probate Code Section 9654 because the heir's action for constructive trust sought possession of property. (*Id.* at 823.) It should be noted that Appellant in the *Barefoot* matter's underlying pleadings requested that the trial court declare a constructive trust. The Third Appellate District in *Olson v. Toy* found that the defendant trustee could not be expected to initiate an action on behalf of the estate to declare invalid the trust she administered as trustee. (*Id.* at 824.) The Third

Appellate District held that the heirs had standing to bring the action because they had an interest in the trust property if the trust was declared invalid. (*Id.*) It should be noted that the Third Appellate District’s decision was based at least in part on Code of Civil Procedure Section 1060 which has since been repealed. Code of Civil Procedure Section 1060 conferred standing on anyone involved in an “actual controversy” relating to a trust. (*Id.* at 824-825). The repeal of Code of Civil Procedure Section 1060 does not disrupt the Third Appellate District’s reasoning that the fact that the heirs were disinherited under the trust instrument does not prevent them from maintaining an action for declaratory relief as to the validity of the trust. (*Id.* at 825).

The Fifth Appellate District in the *Barefoot* matter failed to consider the very specific language in James A. Barringer & Noel M. Lawrence, 2 CEB California Trust and Probate Litigation, Chapter 20 Trust Contests, § 20.6 Standing, where the authors note: “Those who would gain a pecuniary benefit from invalidating the trust should have standing to bring a trust contest...Under most circumstances, the contestants are the beneficiaries of an earlier estate plan or the heirs at law.” (*Id.* at 20-6).

Therefore, Supreme Court review is necessary to secure uniformity of decisions.

IV. STANDING IS A FEDERAL CONCEPT AND THERE IS NO CORRELATING STATE STANDING REQUIREMENT.

Standing is a concept that has been largely developed by federal courts throughout the twentieth century. (*Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 990.) It is a constitutional limitation to the subject matter jurisdiction of federal courts and is rooted in the “case” and “controversy” requirement of Article III of the federal Constitution. (*Id.*)

Unlike the federal Constitution, the California Constitution imposes no such limitation to the subject matter jurisdiction of state courts. (*Jasmine Networks, Inc. v. Superior Court, supra*, 180 Cal.App.4th at 990). Rather, the state’s Constitution “empower[s] superior court[s] to adjudicate any ‘cause’ brought before it.” (Citations omitted.) (*Id.*)

“At its core standing concerns a specific party’s interest in the outcome of a lawsuit,” and a party must generally show, “a direct and substantial beneficial interest” in the outcome. (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248.) However, to determine whether a plaintiff has standing in state court it’s necessary to analyze the scope of the statute granting the right to relief. (*Id.* at 1248-1249). Here, as discussed above, the statutes authorize Appellant to request the relief sought.

Code of Civil Procedure Section 367 requires that every action be maintained “in the name of the real party in interest.” This provision is not equivalent to federal standing requirements and it poses no obstacles to a plaintiff with a right to sue under substantive law. (*Jasmine Networks, Inc. v. Superior Court, supra*, 180 Cal.App.4th at 991). Federal doctrine requires plaintiffs to establish an entitlement to judicial action separate from proof of the substantive merits of the claim advanced. (*Id.* at 980, 991). In contrast, Code of Civil Procedure Section 367 simply requires that the action be maintained in the name of the person who has the right to sue under the substantive law. (*Id.* at 980, 991).

Appellant is the aggrieved party in interest and has brought this action in her capacity as an individual. She has met all required standing prerequisites and should be allowed to proceed with her petition. As stated above, decades old case law and Section 17200(a) when harmonized with the entire statutory scheme confirms that Appellant has standing to contest the trust. Appellant should be allowed to proceed with her contest under Probate Code Section 17200(a). If the trial court determined that it wasn't the appropriate court to hear Appellants claims, then it should have transferred her matter to the appropriate court or division pursuant to Code of Civil Procedure 396 so her claims could be heard on the merits.

//

CONCLUSION

For the reasons stated, the petition for review should be granted.

Dated: November 15, 2018

Respectfully submitted,



Nathan D. Pastor

State Bar No. 299235

Attorney for Petitioner and Appellant

Joan Mauri Barefoot

CERTIFICATION OF WORD COUNT

I, Nathan D. Pastor, hereby certify in accordance with California Rules of Court, rule 8.504(d)(1), that this brief contains 3530 words as calculated by the Microsoft Word software in which it was written.

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

Dated: November 15, 2018

Respectfully submitted,



Nathan D. Pastor

PROOF OF SERVICE

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

On November 15, 2018, I served true copies of the foregoing document(s) described as:

REPLY TO ANSWER TO PETITION FOR REVIEW

on the following:

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

Superior Court of California, County of Tuolumne
Honorable Kate Powell Segerstrom
60 N Washington Street
Sonora, CA 95370

Eric Nielson
Gianelli & Associates
1014 16th Street
Modesto, CA 95354

Dana Anthony Berry, Sr.
237 Town Center West #107
Santa Maria, CA 93458

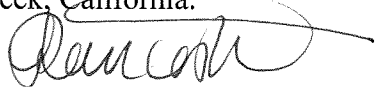
Dana Anthony Berry, Sr.
5149 Bain Street
Mira Loma, CA 91752

BY US MAIL

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

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

Executed on November 15, 2018, at Walnut Creek, California.



Sarah Dancaster