

JAN 10 2019

Jorge Navarrete Clerk

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Deputy

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

MOTION FOR JUDICIAL NOTICE

Filed Concurrently with APPELLANT'S OPENING
BRIEF ON THE MERITS

**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 Appellant
Joan Mauri Barefoot

MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to California Rules of Court 8.520(g), 8.252, subd. (a)(2), (B), and (D) and Evidence Code section 452, subd. (c), (d), (g) and (h) and section 459, Appellant, Joan Mauri Barefoot, through counsel, moves this Court to take judicial notice of the documents attached to the Declaration of Nathan D. Pastor pursuant to California Rule 8.252, subd. (a)(3). The documents are identified below:

A true and correct copy of the Notification of Trustee dated October 20, 2016.

A true and correct copy of Dana Anthony Berry, Sr.'s filed trust contest dated February 21, 2017.

A true and correct copy of Shana Lee Wren's filed Status Review Hearing Statement dated June 8, 2018.

A true and correct copy of the Honorable Kate Powell Segerstrom's minute order dated June 15, 2018.

A true and correct copy of Shana Lee Wren's filed Status Review Hearing Statement dated September 13, 2018.

A true and correct copy of the Honorable Kate Powell Segerstrom's minute order dated September 28, 2018.

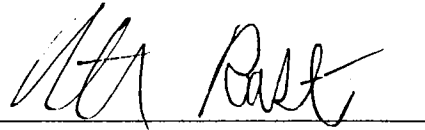
A true and correct copy of the filed Stipulation to Continue/Vacate Mandatory Settlement Conference and Trial and Schedule Status Review Hearing dated December 17, 2018.

Appellant's Motion for Judicial Notice is based on this notice, the attached Memorandum of Points and Authorities, the declaration of Appellant's counsel, and the accompanying exhibits.

Respectfully submitted.

Dated: January 9, 2019

LAW OFFICES OF NATHAN D. PASTOR

A handwritten signature in black ink, appearing to read "Nathan D. Pastor", written over a horizontal line.

Nathan D. Pastor
Attorney for Appellant,
Joan Mauri Barefoot

MEMORANDUM OF POINTS AND AUTHORITIES

The documents Appellant wishes the Court to take judicial notice of are important to understanding Appellant's position on appeal. All of the documents other than the "notification by trustee" are documents that were publicly filed under the exact same case number as the instant appeal in the Tuolumne County Superior Court. Inexplicably, Dana Anthony Berry Sr.'s filed trust contest was not included in the documents provided by the Tuolumne County Superior Court to the Fifth Appellate District in the record on appeal. The other filed documents and minute orders were put into the trial court's publicly filed record after the record on appeal was sent from the Tuolumne County Superior Court to the Fifth District Court of Appeal.

It is important for the California Supreme Court to have a full and complete record of all the documents, minute orders and pleadings that have been filed at the trial court level in the instant appeal. The only document Appellant is requesting that the Court take judicial notice of that is not publicly filed is the "notification of trustee" that was provided to Appellant by the trustee on October 20, 2016 because Appellant is an intestate heir and therefore the trustee was required to provide Appellant the notification pursuant to California Probate Code 16061.7. It is important for the Court to have the notification of trustee in the record so that the

Court understands how Appellant became aware of the fact that she was disinherited.

Therefore, Appellant moves this Court to take judicial notice of the documents identified in the Request for Judicial Notice which support Appellant's requests for relief. Judicial notice is the appropriate procedure to bring these documents to the Court's attention. (Cal.Evid.Code 459, subd. (a); Rules of Court, Rule 8.252, subd. (a)(2).)

All of these documents are necessary for Appellant's opening brief on the merits.

None of these documents were submitted by the Tuolumne County Superior Court to the Fifth District Court of Appeal or to the California Supreme Court.

California Evidence Code section 452, subd. (c) provides that judicial notice may be taken of "...Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." It also provides that judicial notice may be taken of any document published, recorded, or filed by any executive department. (see also *Serrano v. Priest* (1971) 5 Cal.3d 584, *Wolfe v. State Farm Fire & Casualty Ins. Co* (1996) 46 Cal.App.4th 554, 567 FN.16; *Hogen v. Valley Hosp.* (1980) 147 Cal.App.3d 119, 125.) "Official acts" include reports, records, files, and notices maintained by local governments, including

counties. (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

California Evidence Code section 452, subd. (d) provides that judicial notice may be taken of “records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.”

California Evidence Code section 452, subd. (g) provides that judicial notice may be taken of “facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.”

California Evidence Code section 452, subd. (h) provides that judicial notice may be taken of “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Based on the foregoing reasons and authorities, Appellant respectfully request that the Court grant her Motion for Judicial Notice.

Dated: January 9, 2019

LAW OFFICES OF NATHAN D. PASTOR

A handwritten signature in black ink, appearing to read "Nathan D. Pastor", written over a horizontal line.

Nathan D. Pastor
Attorney for Appellant,
Joan Mauri Barefoot

DECLARATION OF NATHAN D. PASTOR

I, Nathan D. Pastor, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

1. I am an attorney in good standing and licensed to practice before the courts of the State of California.
2. I am counsel for Appellant Joan Mauri Barefoot in the instant appeal.
3. Exhibit A is a true and correct copy of the Notification of Trustee dated October 20, 2016.
4. Exhibit B is a true and correct copy of Dana Anthony Berry, Sr.'s filed trust contest dated February 21, 2017.
5. Exhibit C is a true and correct copy of Shana Lee Wren's filed Status Review Hearing Statement dated June 8, 2018.
6. Exhibit D is a true and correct copy of the Honorable Kate Powell Segerstrom's minute order dated June 15, 2018.
7. Exhibit E is a true and correct copy of Shana Lee Wren's filed Status Review Hearing Statement dated September 13, 2018.
8. Exhibit F true and correct copy of the Honorable Kate Powell Segerstrom's minute order dated September 28, 2018.

9. Exhibit G is a true and correct copy of the filed Stipulation to Continue/Vacate Mandatory Settlement Conference and Trial and Schedule Status Review Hearing dated December 17, 2018.

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

Executed this 9th date of January 2019 at Walnut Creek, California.

A handwritten signature in black ink, appearing to read "Nathan D. Pastor", written over a horizontal line.

Nathan D. Pastor

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

[PROPOSED] ORDER

Appellant's request for judicial notice filed _____, is
granted.

Dated: _____

Chief/Associate Justice

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 January 9, 2019, I served true copies of the foregoing document(s) described as:

MOTION FOR JUDICIAL NOTICE

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

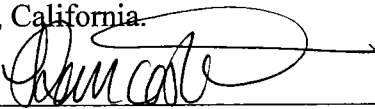
Dana Anthony Berry, Sr.
237 Town Center West #107
Santa Maria, CA 93458

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 January 9, 2019, at Walnut Creek, California.



Sarah Dancaster

EXHIBIT A

**NOTIFICATION BY TRUSTEE
(PURSUANT TO PROBATE CODE SECTION §16061.7)**

ROBERT B. MAYNORD and JOAN L. MAYNORD executed THE MAYNORD 1986 FAMILY TRUST ("Trust") in their capacity as Trustors on March 11, 1986. THE MAYNORD 1986 FAMILY TRUST was amended on October 27, 1992. ROBERT B. MAYNORD died on September 12, 1993, leaving JOAN L. MAYNORD as the sole Trustor and Trustee. THE MAYNORD 1986 FAMILY TRUST was amended and restated on October 29, 1993, amended on October 24, 1997, October 19, 1999, August 1, 2000, January 27, 2004, September 30, 2005, October 11, 2005, fully amended and restated on April 18, 2007, July 7, 2010, further amended on March 21, 2011, fully amended and restated on June 1, 2011, amended on February 7, 2012, July 26, 2012, fully amended and restated on March 13, 2013, June 10, 2013, September 13, 2013, amended on February 26, 2014 and fully amended and restated on April 21, 2014, August 27, 2014, January 8, 2015, amended on March 3, 2016 and fully amended and restated on March 17, 2016. Due to the death of JOAN L. MAYNORD on August 20, 2016, Probate Code Section §16061.7 requires SHANA L. WREN as successor Trustee to provide the following notification:

1. The name, mailing address and telephone number of the Trustee is set forth below:

SHANA L. WREN, Trustee
16185 Tuolumne Road,
Sonora, CA 95370,
(209) 352-5153.

2. The address of the principal place of trust administration pursuant to Probate Code Section §17002 is:


16185 Tuolumne Road,
Sonora, CA 95370

3. As of the date of death of JOAN L. MAYNORD, there were no modifications or amendments to said Trust Agreement and the terms and provisions thereof were in full force and effect.

4. The terms of the Trust are set forth in the attached copy of the Twenty-Fourth Amendment and Restatement of the Trust.

5. YOU MAY NOT BRING AN ACTION TO CONTEST THE TRUST MORE THAN 120 DAYS FROM THE DATE OF THIS NOTIFICATION BY THE TRUSTEE IS SERVED UPON YOU OR 60 DAYS FROM THE DATE OF WHICH A COPY OF THE TERMS OF THE TRUST IS MAILED OR PERSONALLY DELIVERED TO YOU IN RESPONSE TO YOUR REQUEST DURING THE 120-DAY PERIOD, WHICHEVER IS LATER.

Dated: 10/27/2016


SHANA L. WREN,
Trustee

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is 27 S. Shepherd Street, Sonora, CA 95370.
3. I served the foregoing **NOTIFICATION BY TRUSTEE (PURSUANT TO PROBATE CODE SECTION §16061.7)** on each person named below by enclosing a copy in an envelope addressed as shown below AND placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business' practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
- 4a. Date of deposit: October 24, 2016
- 4b. Place of deposit: Sonora, California

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

Dated: October 24, 2016


MISTY MARQUETTE WILSON

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

JANA SUSAN JENNINGS
2008 Dorothy Lane
Fullerton, CA 92831

JOAN MAURI BAREFOOT
4466 Yupon Ridge
Houston, TX 77872

DANA ANTHONY BERRY, SR.
237 Town Center West #107
Santa Maria, CA 93458

KEVIN BERRY
972 Croyden Way
Manteca, CA 95336

TOMMY JOE GLOVER
9274 Old Hickory Grove Road
Franklin, TX 77856

JUSTINE BERRY
2737 NW 10th Ter
Cape Coral, FL 33993

Interfaith
18500 Striker Court
Sonora, CA 95370

JAMIE BERRY
c/o Theresa Lemay
771 Oakmont Court
Corona, CA 92882

EXHIBIT B

RJ
FAX

FILED

FEB 21 2017

1 Dana Anthony Berry, Sr.
2 237 Town Center West, # 107
3 Santa Maria, CA 93458

3 In Pro Per
4 Dana Anthony Berry, Sr.

Superior Court of California
County of Toulumne
by: CO-MR Clerk

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF TOULUMNE

10 In re Trust Estate of:

11 MAYNORD 1986 FAMILY
12 TRUST, as amended and
13 restated.

Case No. PR11414

PETITION TO INVALIDATE
TRUST DUE TO INCAPACITY
AND UNDUE INFLUENCE

Date: 4-7-17
Time: 8:30am
Dept: Probate

16 Petitioner Dana Anthony Berry, Sr. aka Tony Berry, Sr. ("Petitioner" or
17 "Tony"), respectfully alleges as follows:

18 Background

19 1. In or around August 1978, Decedent and her husband Robert B.
20 Maynard founded Maynard's Ranch now called Maynard's Chemical Dependency
21 Recovery Centers Inc. in Sonora, California.

22 2. On March 11, 1986, Decedent, as settlor and trustee along with her
23 husband Robert B. Maynard, established the Maynard 1986 Family Trust
24 ("Trust"). Decedent and her husband subsequently executed an amendment to the
25 Trust dated October 27, 1992. Robert B. Maynard died on September 12, 1993,
26 leaving Decedent sole trustee.

27 3. Decedent subsequently executed twenty-three amendments and/or
28 restatements and amendments to the Trust, fifteen of which were executed the last
PETITION TO INVALIDATE TRUST DUE TO INCAPACITY AND UNDUE INFLUENCE

RECEIVED
FEB 21 2017
BY

1 six years of Decedent's life, dated as follows:

- 2 1) October 29, 1993 (the "1993 Amendment and Restatement")
- 3 2) October 24, 1997 (the "1997 Amendment")
- 4 3) October 19, 1999 (the "1999 Amendment")
- 5 4) August 1, 2000 (the "2000 Amendment")
- 6 5) January 27, 2004 (the "2004 Amendment")
- 7 6) September 30, 2005 (the "September 2005 Amendment")
- 8 7) October 11, 2005 (the "October 2005 Amendment")
- 9 8) April 18, 2007 (the "2007 Amendment and Restatement")
- 10 9) July 7, 2010 (the "2010 Amendment and Restatement")
- 11 10) October 26, 2010 (the "October 2010 Amendment")
- 12 11) March 21, 2011 (the "March 2011 Amendment")
- 13 12) June 1, 2011 (the "June 2011 Amendment and Restatement")
- 14 13) February 7, 2012 (the "February 2012 Amendment")
- 15 14) July 26, 2012 (the "July 2012 Amendment")
- 16 15) March 13, 2013 (the "March 2013 Amendment and Restatement," a
- 17 copy of which is attached as Exhibit A).
- 18 16) June 10, 2013 (the "June 2013 Amendment and Restatement")
- 19 17) September 13, 2013 (the "September 2013 Amendment and
- 20 Restatement")
- 21 18) February 26, 2014 (the "February 2014 Amendment")
- 22 19) April 21, 2014 (the "April 2014 Amendment and Restatement")
- 23 20) August 27, 2014 (the "August 2014 Amendment and Restatement")
- 24 21) January 8, 2015 (the "2015 Amendment and Restatement")
- 25 22) March 3, 2016 (the "March 2016 Amendment")
- 26 23) March 17, 2016 (the "March 2016 Full Amendment and Restatement,"
- 27 a copy of which is attached as Exhibit B).

28 4. Decedent had six children during her lifetime: Shana Lee Wren, Jana

1 Susan Jennings, Joan Mauri Barefoot, Dana Anthony Berry, Sr., Tommy Joe
2 Glover, and James David Berry, Jr. who predeceased Decedent, leaving issue.

3 5. On August 20, 2016, Decedent, a resident of Toulumne County,
4 died at age 84.

5 6. Shana L. Wren, daughter of Decedent, who is a resident of
6 Toulumne County, California, is currently serving as successor Trustee of the
7 Trust.

8 7. Petitioner is a beneficiary of a revocable trust created by Joan L.
9 Maynard ("Decedent" or "Settlor"), as described in this Petition.

10 8. Petitioner is informed and believes that under the terms of a
11 previously executed trust instrument created by Decedent, Decedent left the entire
12 trust estate in equal shares to five of her children, all but Tommy Joe Glover.

13 9. Decedent has had a complicated medical history. Petitioner is
14 informed and believes that beginning in the late 1980's or early 1990's and up
15 through her death, Decedent suffered from approximately five instances of cancer
16 affecting major organs including rectal, colon, breast, and lung. Petitioner is
17 informed and believes that Decedent's last diagnosis of cancer occurred in or
18 around March 2016, approximately six months before Decedent's death.

19 10. Petitioner is informed and believes that in the early 2000's, Decedent
20 was diagnosed with cirrhosis which can result in the liver's inability to remove
21 toxic substances from the blood causing confusion, disorientation, personality
22 changes, and fatigue. Additionally, Petitioner is informed and believes that due to
23 Decedent's cirrhosis, Decedent also had elevated ammonia levels in the blood
24 which can cause confusion and fatigue.

25 11. In or around 2009, Decedent was diagnosed with encephalopathy, a
26 disease that affects the function or structure of one's brain which can result in
27 cognitive deficiencies including poor memory, mental confusion, and inability to
28 understand as well as fatigue and personality changes.

1 12. On January 24, 2009, Decedent emailed her daughter Joan Mauri
2 Barefoot stating that Decedent has had continuing problems with balance and
3 memory due to the toxins and fluid in and around the liver.

4 13. For several years before Decedent's diagnosis with encephalopathy
5 and continuing through her death, Decedent often complained to Petitioner that she
6 had difficulty with thinking, concentrating, and analyzing as well as had occasions
7 of forgetfulness.

8 14. Once such example occurred in or around April 2013 where
9 Decedent forgot how to operate a motorcycle, specifically how to turn the engine
10 on, despite having operated motorcycles for several years.

11 15. Beginning in or around 2009, Jana Susan Jennings began providing
12 care services for Decedent which progressively increased over time. Her duties
13 included cleaning, medication management, cooking, and transporting Decedent to
14 doctor's appointments. She provided caregiving services for Decedent until 2012
15 when she and Decedent had an argument and Jana Susan Jennings stopped
16 providing such services for Decedent.

17 16. On August 28, 2012, Jana Susan Jennings mailed a letter to her
18 brother James David Berry, Jr. in which she acknowledges Decedent's proclivity
19 to amend the terms of the Trust and expressed her desire to not be part of
20 Decedent's Trust.

21 17. Approximately one year later in 2013, Petitioner is informed and
22 believes that Jana Susan Jennings and Decedent reconciled and once again she
23 began providing care services for the Decedent up through the Decedent's death.
24 Petitioner is informed and believes that Jana Susan Jennings' intentions to provide
25 care services for Decedent was to gain a larger share of the estate in the Trust.

26 18. Beginning in or around 2012, Shana Lee Wren began providing care
27 services for Decedent including cleaning, medication management, cooking, and
28 transporting Decedent to doctor's appointments. Before that, Petitioner is

1 informed and believes that Shana Lee Wren had not spoken to Decedent from
2 approximately 2006 to 2012 stemming from an argument between them.

3 19. In or around early 2012, Petitioner is informed and believes that Joan
4 Mauri Barefoot moved from Houston, Texas to housing located on the Maynard's
5 Chemical Dependency Recovery Centers' grounds and began providing care
6 services for the Decedent to allow Jana Susan Jennings more time to focus on the
7 Decedent's business. In or around May or June 2013, Petitioner is informed and
8 believes that Decedent and Mauri Joan Barefoot had an argument and that Shana
9 Lee Wren bullied Mauri Joan Barefoot into leaving the recovery center and stop
10 providing care services for the Decedent.

11 20. Additionally, Petitioner is informed and believes that either Shana
12 Lee Wren or Jana Susan Jennings convinced Decedent that Mauri Joan Barefoot
13 was attempting to bring an action against Decedent regarding real property in
14 Texas when in fact this was completely untrue.

15 21. Petitioner is informed and believes that James David Berry, Jr.
16 served as a counselor for Maynard's Chemical Dependency Recovery Centers
17 beginning in 2008 or 2009. Petitioner is informed and believes that James David
18 Berry, Jr. moved to Florida in or around 2012 but continued providing services for
19 Maynard's Chemical Dependency Recovery Centers. Petitioner is informed and
20 believes that in or around May or June 2014, Shana Lee Wren traveled to Florida
21 with her husband and Tommy Joe Glover to conduct an intervention for James
22 David Berry, Jr. and convinced him to sell his shares in the company to Decedent
23 and not continue working for Maynard's Chemical Dependency Recovery Centers.
24 James David Berry, Jr. died a few months later on August 28, 2012.

25 22. Petitioner periodically received support from Decedent in the form
26 of small cash gifts to larger ones such as a motorcycle in or around February 2005
27 and a vehicle in August 2009. In or around 2004 or 2005, Decedent purchased a
28 Travel Supreme RV and informed Petitioner that she would eventually give it to

1 him. When Petitioner received the vehicle in 2009, Jana Susan Jennings informed
2 Petitioner that she did not want Decedent giving him the RV. The following year
3 in or around August 2010, Decedent called Petitioner to tell him that he would not
4 be receiving the RV. Petitioner is informed and believes that Jana Susan Jennings
5 influenced Decedent's decision to not give the RV to Petitioner.

6 23. By distancing all other family members from Decedent, Petitioner is
7 informed and believes that Jana Susan Jennings and Shana Lee Wren persuaded
8 Decedent to change her estate plan to give them increasingly more gifts and larger
9 shares under the Trust.

10 24. Petitioner is informed and believes that the trust amendments and/or
11 trust restatements described above are void because they were the product of
12 undue influence as defined by Probate Code Section 86 and Welfare and
13 Institutions Code section 15610.70, in that they were the result of excessive
14 persuasion that caused the Decedent to act by overcoming the Decedent's free will,
15 and resulted in an inequity because Jana Susan Jennings and Shana Lee Wren are
16 the largest beneficiaries of the Trust to the detriment of Decedent's other children.

17 FIRST CAUSE OF ACTION

18 (INVALIDITY OF TRUST INSTRUMENT FOR LACK OF CAPACITY)

19 25. Petitioner realleges Paragraphs 1 through 24 above as though set
20 forth herein in full.

21 26. Petitioner is informed and believes and on that basis alleges that at
22 the time Settlor executed the 2009 Amendment, and likely much earlier based on
23 her health, she lacked the requisite testamentary capacity under Probate Code
24 Section 6100.5 to amend her trust or its dispositive provisions, in that she did not
25 have sufficient mental capacity to understand the nature of the testamentary act,
26 understand and recollect the nature and situation of her property, and/or remember
27 and understand her relations to her living relatives and those whose interests would
28 be affected by the terms of the Trust.

1 27. Petitioner further asserts that as early as Settlor executed the 2009
2 Amendment and possibly earlier based on her health, she also lacked capacity
3 under the more stringent standard for contractual capacity imposed by Probate
4 Code Section 812 (which Petitioner contends should apply in this case), should
5 that standard be deemed applicable, in that Petitioner lacked the means to
6 communicate her decision to amend the trust and was unable to understand and
7 appreciate the rights, duties, and responsibilities created by or affected by the
8 Amendment, the probable consequences of the Amendment to the Settlor and the
9 persons affected by the Amendment, and the significant risks, benefits, and
10 reasonable alternatives to amending the trust as provided in the Amendment.

11 28. Specifically, at the time the Settlor executed the Amendment, she
12 was suffering from encephalopathy which commonly causes confusion and loss of
13 memory because the impairment affects the thought process locations in the brain.

14 **SECOND CAUSE OF ACTION**

15 **(INVALIDITY OF TRUST INSTRUMENT FOR UNDUE INFLUENCE)**

16 29. Petitioner realleges Paragraphs 1–28 above as though set forth herein
17 in full.

18 30. Petitioner is informed and believes and on that basis alleges that as
19 early as the Settlor’s execution of the 2009 Amendment and possibly earlier was
20 not her free and voluntary act, and that Jana Suan Jennings and Shana Lee Wren
21 procured the 2009 Amendment and possibly earlier amendments by undue
22 influence. By then, Decedent’s mental and physical condition had so substantially
23 diminished that she was unable to resist undue influence.

24 31. At the time Settlor executed the 2009 Amendment and possibly
25 earlier amendments, Decedent was in a position of extreme vulnerability in that,
26 among other things, Decedent was elderly and suffered from impaired physical and
27 mental functions, including difficulty in caring for herself without assistance.

28 32. At the time Decedent executed the 2009 Amendment and possibly

1 earlier amendments, Jana Suan Jennings and Shana Lee Wren occupied a position
2 of trust and confidence with respect to Decedent in that, among other things,
3 Decedent was dependent for care on Jana Suan Jennings and Shana Lee Wren as
4 her caregivers. Specifically, Petitioner is informed and believes that Shana Lee
5 Wren and Jana Suan Jennings were managing the Decedent's business, did nearly
6 all of Decedent's shopping, personal housekeeping, and other personal matters, set
7 up and transported Decedent to Decedent's medical and other health care
8 appointments, and generally provided Decedent with continuous assistance and
9 management of Decedent's everyday personal and financial affairs.

10 33. Petitioner is informed and believes that Jana Suan Jennings and
11 Shana Lee Wren actively participated in the creation and/or execution of the 2009
12 Amendment and possibly earlier amendments as well. Among other things, in
13 light of Decedent's diminished physical and mental health and general difficulty in
14 communicating her wishes, Petitioner is informed and believes that Jana Suan
15 Jennings and Shana Lee Wren distanced Decedent's other children from her and
16 must have convinced Decedent that her other children were not deserving of
17 receiving a larger share or interest in the Trust.

18 34. As a result of the conduct of Jana Suan Jennings and Shana Lee
19 Wren as described above, Decedent, among other things, left a bulk of her estate to
20 Jana Suan Jennings and Shana Lee Wren rather than to include other family
21 members on a more equitable basis. In addition, the changes in Decedent's
22 property disposition resulted in significant economic consequences to Petitioner
23 and other members of Decedent's immediate family, who were deprived of the
24 bulk of their interest in Decedent's wealth and property, all in a manner which
25 would not have occurred had Decedent not been subjected to Jana Suan Jennings'
26 and Shana Lee Wren's undue influence.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**
2 **(CONSTRUCTIVE TRUST)**

3 35. Petitioner realleges Paragraphs 1-34 above as though set forth herein
4 in full.

5 36. Petitioner is informed and believes that at all times from and after
6 Decedent's death, Shana Lee Wren has been in sole and exclusive possession of
7 the assets of the Trust by virtue of her role as successor trustee.

8 37. To the extent Shana Lee Wren may have sold or otherwise
9 disposed of any of the Trust assets, she holds any consideration she received and
10 any assets traceable to such consideration as a constructive trustee for the Trust or
11 Petitioner. To the extent that the successor trustee Shana Lee Wren has made any
12 distributions from the Trust, the recipient holds the distribution and/or any assets
13 traceable to the distribution as a constructive trustee.

14 Notice

15 38. The names and residence addresses of the persons entitled to
16 notice of this Petition, so far as are known to Petitioner, are listed as follows:

17 JANA SUSAN JENNINGS
18 2008 Dorothy Lane
Fullerton, CA 92831

JOAN MAURI BAREFOOT
4466 Yupon Ridge
Houston, TX 77872

19 DANA ANTHONY BERRY, SR.
20 237 Town Center West, #107
Santa Maria, CA 93458

KEVIN BERRY
972 Croyden Way
Manteca, CA 95336

21 TOMMY JOE GLOVER
22 9274 Old Hickory Grove Road
Franklin, TX 77856

JUSTINE BERRY
2737 NW 10th Ter
Cape Coral, FL 3393

23 Interfaith
24 15800 Striker Court
Sonora, CA 95370

JAMIE BERRY
c/o Theresa Lemay
771 Oakmont Court
Corona, CA 92882

25 SHANA L. WREN
26 16185 Tuolumne Road
Sonora, CA 95370

27 39. There are no requests for special notice in this matter.

28 40. The principal place for the administration of the trust is located at

1 16185 Tuolumne Road, Sonora, California 95370. Under Probate Code sections
2 17000-17457, this court has jurisdiction to determine all matters raised by this
3 petition.

4 **WHEREFORE**, Petitioner request judgment as follows:

5 1. Finding that Petitioner has provided proper notice of this Petition to
6 all entitled parties;

7 2. Invalidating the 2009 Amendment and possibly earlier amendments
8 on the grounds that Decedent lacked testamentary capacity when she executed that
9 Amendment and that Jana Suan Jennings and Shana Lee Wren procured that
10 Amendment by undue influence;

11 3. For an order declaring that Shana Lee Wren holds all of the
12 following as a constructive trustee for the Trust and/or Petitioner; (a) the proceeds
13 of any of the Trust's assets sold or otherwise disposed of by Shana Lee Wren and
14 any assets traceable to those proceeds; and (b) any distributions of any Trust assets
15 previously made and any assets traceable to any such distributions;

16 4. For Petitioner's costs of suit herein, including reasonable
17 attorney's fees; and

18 5. For any other relief that the Court considers just and proper.

19
20 Respectfully Submitted,

21 Dated: February 19, 2017

22 
23 Dana Anthony Berry, Sr., Beneficiary of
24 the Maynord 1986 Family Trust

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Dana Anthony Berry, Sr., am the beneficiary of the Maynord 1986 Family Trust, as amended and restated and Petitioner herein. I have read the foregoing document entitled **PETITION TO INVALIDATE TRUST DUE TO INCAPACITY AND UNDUE INFLUENCE** and know its contents. The matters stated therein are true of my own knowledge save and except those matters stated on information and belief and as to those matters I believe them to be true.

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

Executed this 19 day of February 2017 at Santa Maria, California.


Dana Anthony Berry, Sr.

COPY

**SIXTEENTH AMENDMENT AND RESTATEMENT OF
THE MAYNORD 1986 FAMILY TRUST**

This Sixteenth Amendment and Restatement of THE MAYNORD 1986 FAMILY TRUST, Trust Agreement is made this 13th day of March 2013, by JOAN L. MAYNORD, hereafter called "Trustor" and "Trustee" depending on the context.

WHEREAS the Trustor and her spouse, ROBERT B. MAYNORD, hereto made and entered into "THE MAYNORD 1986 FAMILY TRUST" on the 11th day of March 1986, "said original Trust Agreement";

WHEREAS the Trustor and her spouse, ROBERT B. MAYNORD, made and entered into the "FIRST AMENDMENT TO THE MAYNORD 1986 FAMILY TRUST" on the 27th day of October 1992;

WHEREAS Trustor's spouse, ROBERT B. MAYNORD, passed away on September 12, 1993, leaving Trustor, JOAN L. MAYNORD, as the sole Trustor and Trustee of "THE MAYNORD 1986 FAMILY TRUST";

WHEREAS the Trustor, JOAN L. MAYNORD, made and entered into the "SECOND AMENDMENT TO THE MAYNORD 1986 FAMILY TRUST" on the 29th day of October 1993;

WHEREAS the Trustor, JOAN L. MAYNORD, made and entered into the "THIRD AMENDMENT TO THE MAYNORD 1986 FAMILY TRUST" on the 24th day of October, 1997;

WHEREAS the Trustor, JOAN L. MAYNORD, made and entered into the "FOURTH AMENDMENT TO THE MAYNORD 1986 FAMILY TRUST" on the 19th day of October 1999;

WHEREAS the Trustor, JOAN L. MAYNORD, made and entered into the "FIFTH AMENDMENT TO THE MAYNORD 1986 FAMILY TRUST" on the 1st day of August 2000;



BRFT 0017