

JAN 25 2019

Jorge Navarrete Clerk

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

Deputy

In Re:

Supreme Court Case No. S251574

THE MAYNORD 1986 FAMILY
TRUST, Established March 11,
1986

Court of Appeal Case No. F076395

Superior Court Case No. PR11414

JOAN MAURI BAREFOOT,

Petitioner/Appellant,

v.

JANA SUSAN JENNINGS and
SHANA LEE WREN,

Respondents

OPPOSITION TO MOTION FOR JUDICIAL NOTICE

Eric T. Nielsen, SBN 232989

Michael L. Gianelli, SBN 70950

GIANELLI | NIELSEN, APLC

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Attorneys for Respondents

SHANA L. WREN and JANA S. JENNINGS

OPPOSITION TO MOTION FOR JUDICIAL NOTICE

Appellant's counsel appears to be confused by the procedural history leading up to this Court's grant of review of the instant action. This is likely due to the fact that Appellant's counsel was only recently retained in connection with Appellant's petition for review with this Court.

The fact of the matter is that Appellant's prior counsel dutifully filed Form APP-003 "Appellant's Notice Designating Record on Appeal" (the "Designation"), and the Designation *did not* include the records that Appellant now states were "inexplicably" left out of the record by the Tuolumne County Superior Court. These records were simply not designated by Appellant in the appeal. A true and correct copy of the Designation is attached as **Exhibit "A"** to the declaration of Eric T. Nielsen filed herewith.

More importantly, Appellant suggests that the documents in which Appellant would like this Court to take judicial notice of, stem from the same case between Appellant and Respondents in the Tuolumne County Superior Court. They do not. The cases that Appellant states are one in the same in the Tuolumne County Superior Court have entirely different parties, and entirely different facts. Specifically, the instant action arises out of a case filed by Appellant against Jana Susan Jennings, individually and Shana Lee Wren, individually. The case filed by Dana Anthony Berry, Sr. was against only the Maynord 1986 Family Trust as amended and restated.

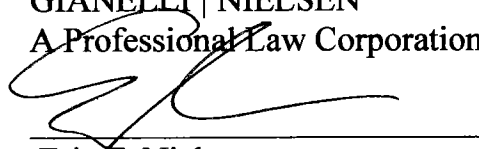
Furthermore, Dana Anthony Berry is unequivocally a named beneficiary in the Trust instrument at issue in this matter whereas Appellant is unequivocally not. Taking judicial notice of documents that Appellant herself did not designate in the record on appeal, and that relate to a separate action, with distinct and different facts and parties will effectively confuse the issue being considered by this Court because in one case (Mr. Berry's case), he is an actual named beneficiary, and in the other case (Appellant's case being reviewed by this Court), Appellant is *not* a named beneficiary.

Notwithstanding the foregoing, Respondents do not object to inclusion of the single document Appellant has identified as not being part of the Tuolumne County Superior Court record (i.e. the Probate Code 16061.7 Notification of Trustee). This is relevant to this Court's review. However, Appellant's statement that she only found out that she was disinherited by this Notification of Trustee is absolutely inconsistent with the actual facts, including without limitation the statements made by Appellant in Appellant's e-mail to Decedent, and others dated May 31, 2013.

Dated: 1/25/2019

Respectfully submitted,

GIANELLI | NIELSEN
A Professional Law Corporation



Eric T. Nielsen
Attorneys for Respondents
SHANA L. WREN and
JANA S. JENNINGS

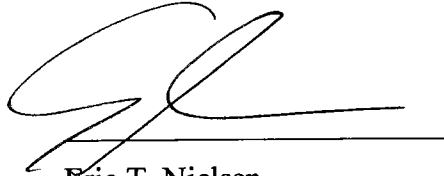
DECLARATION OF ERIC T. NIELSEN

In support of this Opposition, I, Eric T. Nielsen, declare as follows:

1. I am an attorney duly licensed to practice in the State of California and am a member of the law firm on Gianelli | Nielsen, counsel of record for Respondents SHANA L. WREN and JANA S. JENNINGS. I have personal knowledge of the matters set forth herein, except as to those matters which express my opinion and belief and, as to those matters, I believe them to be true.

2. On November 13, 2018, my office received the Appellant's Notice Designating Record on Appeal, a true and correct copy is attached hereto as **Exhibit A** and incorporated herein.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this 19th day of January 2019, in Modesto, California.



Eric T. Nielsen

PROOF OF SERVICE

I, Raquel Enzaldo, declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1014 – 16th Street, Modesto, CA 95354.

On January 25, 2019, I served one copy of the **OPPOSITION OF MOTION FOR JUDICIAL NOTICE** on the following persons by placing in a sealed, postage-paid envelope to be sent through U.S. Mail in the regular course of business:

LAW OFFICES OF NATHAN D. PASTOR
Mr. Nathan D. Pastor
2033 N. Main Street, Suite 750
Walnut Creek, CA 94596

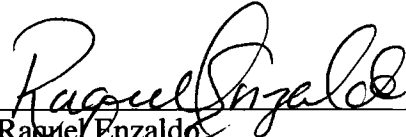
Clerk of the Court
Tuolumne County Superior Court
60 N. Washington Street
Sonora, CA 95370

Clerk of the Court
5th District Court of Appeal
2424 Ventura Street
Fresno, CA 93721

Courtesy Copy:
Dana Anthony Berry, Sr.
5149 Bain Street
Mira Loma, CA 91725

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

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 25, 2019, Modesto, California.


Raquel Enzaldo

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Dinesh H. Singhal FIRM NAME: The Singhal Law Firm STREET ADDRESS: 711 Louisiana Street - Suite 1900 CITY: Houston TELEPHONE NO.: 713.222.8500 E-MAIL ADDRESS: dinesh@singhallaw.com ATTORNEY FOR (name): Joan Mauri Barefoot	STATE BAR NO.: 194,306 STATE: TX ZIP CODE: 77002 FAX NO.: 866.533.6695
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE STREET ADDRESS: 41 West Yaney Avenue MAILING ADDRESS: CITY AND ZIP CODE: Sonora 95370 BRANCH NAME: Probate	
PLAINTIFF/PETITIONER: Joan Mauri Barefoot DEFENDANT/RESPONDENT: Jana Susan Jennings & Shana Lee Wren	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	
RE: Appeal filed on (date): September 29, 2017	SUPERIOR COURT CASE NUMBER: PR11414 COURT OF APPEAL CASE NUMBER (if known): F076395
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, d, or e and fill in any required information):

- a. A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. An appendix under rule 8.124.
- c. The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed:

- a. WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

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2. b. WITH the following record of the oral proceedings in the superior court:
- (1) A reporter's transcript under rule 8.130. *(You must fill out the reporter's transcript section on page 3 of this form.)* I have *(check all that apply)*:
 - (a) Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
 - (b) Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
 - (c) Attached the reporter's written waiver of a deposit for *(check either (i) or (ii))*:
 - (i) all of the designated proceedings.
 - (ii) part of the designated proceedings.
 - (d) Attached a certified transcript under rule 8.130(b)(3)(C).
 - (2) An agreed statement. *(Check and complete either (a) or (b) below.)*
 - (a) I have attached an agreed statement to this notice.
 - (b) All the parties have agreed in writing (stipulated) to try to agree on a statement. *(You must attach a copy of this stipulation to this notice.)* I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
 - (3) A settled statement under rule 8.137. *(You must attach the motion required under rule 8.137(a) to this form.)*

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court *(give the title and date or dates of the administrative proceeding)*:

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(You must complete this section if you checked item 1a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.)

a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed or, if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
(1) Notice of appeal	September 29, 2017
(2) Notice designating record on appeal <i>(this document)</i>	November 6, 2017
(3) Judgment or order appealed from	August 2, 2017
(4) Notice of entry of judgment <i>(if any)</i>	August 8, 2017
(5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order <i>(if any)</i>	August 14, 2017
(6) Ruling on one or more of the items listed in (5)	September 20, 2017
(7) Register of actions or docket <i>(if any)</i>	unknown

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SUPERIOR COURT CASE NUMBER:
PR11414

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

b. Additional documents. (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)	{SEE ATTACHED PAGES}	
(9)		
(10)		
(11)		
(12)		

See additional pages.

c. Exhibits to be included in clerk's transcript

I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

See additional pages.

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

(You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.)

a. I request that the reporters provide (check one):

- (1) My copy of the reporter's transcript in paper format.
- (2) My copy of the reporter's transcript in computer-readable format.
- (3) My copy of the reporter's transcript in paper format and a second copy in computer-readable format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

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5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—the name of the court reporter who recorded the proceedings, and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(5)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(6)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(7)					<input type="checkbox"/> Yes <input type="checkbox"/> No

c. The proceedings designated in 5b include do not include all of the testimony in the superior court.

If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Date: November 6, 2017

Dinesh H. Singhal
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

**APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL -
ADDITIONAL DOCUMENTS**

In addition to the documents listed in part 4(a) of the foregoing form, Appellant designates the following additional documents for inclusion in the Clerk's transcript:

Document Title	Date of Filing
Petition to Determine Validity of and Set Aside Purported Trust Amendment; Remove Trustee and Appoint Successor Trustee; Impose Constructive Trust; and For Accounting	February 17, 2017
Notice of Motion and Motion to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	June 23, 2017
Memorandum of Points and Authorities in Support of Motion to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	June 23, 2017
Declaration of Eric T. Nielsen in Support of Motion to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	June 23, 2017
[Proposed] Order on Motion to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	June 23, 2017
Mauri Barefoot's Memorandum in Opposition to Respondent's Motion to Dismiss	July 10, 2017
Respondent's Reply to Petitioner Joan Mauri Barefoot's Opposition to Motion to Dismiss Pursuant to Probate Code Sections 17200 and 17202	July 14, 2017
Mauri Barefoot's Amended Proof of Service	July 18, 2017
Order on Motion to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	July 21, 2017

Document Title	Date of Filing
Mauri Barefoot's Memorandum in Support of Motion to Reconsider Corrected Order to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	August 14, 2017
Affidavit of Dinesh Singhal Pursuant to California Code of Civil Procedure Section 1008(a)	August 14, 2017
Order Granting Motion to Reconsider Corrected Order to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	August 15, 2017
Respondents' Opposition to Petitioner Joan Mauri Barefoot's Motion to Reconsider Corrected Order to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	September 1, 2017
Petitioner's Reply to Respondents' Opposition to Petitioner's Motion to Reconsider Corrected Order to Dismiss Petition Pursuant to Probate Code Sections 17200 and 17202	September 14, 2017
all minute orders	unknown

PROOF OF SERVICE (Court of Appeal) **Mail** **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Barefoot v. Jennings, et al.
 Court of Appeal Case Number: F076395
 Superior Court Case Number: PR11414

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence business address is (*specify*):
 711 Louisiana Street - Suite 1900; Houston, TX 77002
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
 Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)
 - a. **Mail.** I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting 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 U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) Date mailed: November 6, 2017
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name: Dana Anthony Berrv
 - (ii) Address:
 237 Town Center West, #107
 Santa Maria, CA 93458
 - (b) Person served:
 - (i) Name: Eric Nielsen, Gianelli & Associates
 - (ii) Address:
 1014 16th Street
 Modesto, CA 95354
 - (c) Person served:
 - (i) Name:
 - (ii) Address:

Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): Houston, Texas

Case Name: Barefoot v. Jennings, et al.	Court of Appeal Case Number: F076395
	Superior Court Case Number: PR11414

3. b. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

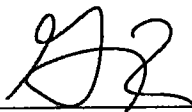
(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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

Date: November 6, 2017

Geoffrey E. Riddle
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


(SIGNATURE OF PERSON COMPLETING THIS FORM)