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

PETITION FOR REVIEW

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

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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:

This petition for review follows the published decision of the Court of Appeal, Fifth Appellate District, filed on August 14, 2018 and certified for publication on September 10, 2018. A copy of the opinion is attached to this petition as Exhibit A.

ISSUE PRESENTED

1. Whether a former beneficiary of a trust lacks standing to challenge the validity of amendments to that trust that resulted in disinheritance?

NECESSITY FOR REVIEW

A caregiver forges an amendment to your parent's trust. The forged amendment disinherits you and your siblings. You and your siblings now lack standing to contest that amendment in probate court because the probate court is closed to disinherited beneficiaries. The Fifth Appellate District's opinion stands for the proposition that beneficiaries impacted by acts against the trust settlor such as fraud or undue influence must prosecute those claims in civil court, not the probate court. Under the Fifth Appellate District's decision, disinherited beneficiaries who may have been the intended victims of fraud or undue influence perpetrated upon a settlor no longer have recourse under the Probate Code to invalidate an ill-gotten trust.

The Fifth Appellate District's decision is fundamentally incorrect for public policy reasons because it creates a perverse incentive to exploit susceptible trust settlors by creating an administrative quagmire for beneficiaries who may be the intended victims of elder abuse and fraud. For example, pursuant to the Fifth Appellate District's decision all

equitable remedies available under the Probate Code are offered to beneficiaries whose interests are merely diminished, however, bars fully disinherited beneficiaries from those same remedies. Using the Fifth Appellate District's approach, disinherited beneficiaries are only allowed back in probate court after they successfully invalidate the ill-gotten trust in civil court.

Most trust contest cases are resolved by a negotiated settlement, therefore, the issue of standing by a disinherited trust beneficiary raised in this case hasn't gone up on appeal before. Before this case, petitions under Probate Code 17200 to contest the validity of trusts on behalf of disinherited beneficiaries were commonly brought under the assumption that the standard applicable to will contests applies equally to trusts. The generally accepted practice is that the probate court is the proper venue for parties whose interests are affected by the challenged trust instrument. There is no express statutory authority mandating so. For comparison, persons disinherited by a will have express statutory standing to contest the ill-gotten will in probate court under Probate Code 48.

If upheld, the Fifth Appellate District's decision will have deep and lasting consequences on the practice of trust litigation and the jurisdiction of the probate court to hear trust contests brought by disinherited beneficiaries. If upheld, the Fifth Appellate District's decision will create a

two-tiered judicial system whereby beneficiaries with diminished interests may bring their claims in probate court pursuant to Probate Code 17200, however, a disinherited beneficiary must seek their remedy in a civil action. The Fifth Appellate District advised, "a complaint alleging the same causes of action would not be barred by the beneficiary limitation of section 17200." (Opn at p. 5 ftn 2). To follow the Fifth Appellate District's approach a disinherited beneficiary would first have to litigate the issue of whether the document is valid or not in civil court. After the ill-gotten trust is invalidated in civil court the victorious contestant who has now conferred standing under Probate Code 17200 by invalidating the ill-gotten trust must return to probate court to litigate remaining companion issues against the trustee. The victorious contestant must return to probate court to litigate remaining companion issues against a trustee because probate courts have exclusive jurisdiction over the internal affairs of trusts. The most common companion issues associated with a trust contest are whether there was a breach of trust, whether there was mismanagement of trust assets by the trustee, whether the trustee should be removed, whether the trustee is permitted to pay for defending the now invalidated trust instrument with trust funds, tracing trust property wrongfully disposed of and recovering the proceeds.

Another cumbersome administrative problem created by the Fifth Appellate District's decision is how courts are to dispose of multiple trust contests filed by both disinherited beneficiaries and beneficiaries with merely diminished interests. If the probate division and the civil division simultaneously set identical trust contests for trial the trustee will be forced to defend identical lawsuits in two separate divisions of the same court. It's common practice for civil divisions to transfer trust contests to the probate division because probate courts have exclusive jurisdiction over the internal affairs of a trust. No matter is more essential to the affairs of a trust than whether the trust instrument itself is valid or not. Civil departments tend to transfer trust contests to probate departments because probate departments are generally better equipped to handle complex trust and estate matters. For example, probate departments commonly have staff that specialize in probate matters such as probate research attorneys, probate examiners and probate technicians or clerks exclusively assigned to the probate department who assist the judge with analyzing complex trust disputes.

If a beneficiary with diminished interests files in probate court and a disinherited beneficiary files in civil court the civil court will likely attempt to transfer the matter to be consolidated with the companion trust contest in probate court. However, the Fifth Appellate District's decision bars courts from consolidating the trust contest filed by a disinherited beneficiary in the

probate division. The Fifth Appellate District's decision may create situations where the civil division and the probate division are forced to decide which division will try the matter first. The Fifth Appellate District's decision may also create situations where the probate court and the civil court both try the matter and reach opposite conclusions regarding whether the instrument is valid or not.

Supreme Court review is essential to resolve the immense administrative confusion caused by the Fifth Appellate District's decision. Probate practitioners and probate courts alike have been operating under the assumption that the probate court is the appropriate court to litigate trust contests filed by disinherited beneficiaries. If the Fifth Appellate District's decision is upheld disinherited beneficiaries will inundate civil and probate divisions with two lawsuits alleging identical facts. One lawsuit will be a petition claiming relief under the probate code and the other will be a complaint claiming relief under the civil code.

The Fifth Appellate District's decision has received statewide attention and practitioners have taken note that the probate court is now closed to disinherited beneficiaries. (*Daily Journal*, 2018). De-publishing the Fifth Appellate District's decision will not resolve the administrative issues created by the decision for the following two reasons.

First, Probate Code 16061.7 states that litigants only have 120 days after receiving notification from the trustee to contest the trust. If litigants receive notice and fail to file a trust contest within the 120 days, they are forever barred from bringing the contest. To avoid risking the severe consequences of being forever barred from bringing a trust contest by the strict statute of limitations contained in Probate Code 16061.7 probate practitioners will file in both civil and probate court. Practitioners will take this approach whether the Fifth Appellate District's opinion is de-published or not because they must avoid the severe consequences and malpractice implications of missing the 120-day statute of limitations contained in Probate Code 16061.7.

Second, after the Fifth Appellate District published its decision many trustees rushed to court to file motions to dismiss trust contests filed by disinherited beneficiaries in probate court based on the Fifth Appellate District's reasoning that disinherited beneficiaries lack of standing under Probate Code 17200. There is no published case law directly addressing the standing of disinherited beneficiaries to contest a trust. Therefore, many lower courts may still apply the Fifth Appellate District's reasoning and dismiss trust contests filed by disinherited beneficiaries whether the decision is de-published or not. If the motions to dismiss that were filed after the Fifth Appellate District published its decision are granted those

dismissed trust contests may be forever lost if contestants are also barred from refiling in civil court on other grounds because of the strict 120-day statute of limitations. This result would have an immediate negative impact on the administration of justice in California.

For all these reasons, the petition for review should be granted, and this Court should decide whether a former beneficiary of a trust lacks standing to challenge the validity of amendments to that trust that resulted in disinheritance.

STATEMENT OF THE CASE AND FACTS

A. Factual Background

Joan Lee Maynord (Joan) died on August 20, 2016 at the age of 83. Joan had five surviving children including Appellant, Respondents Jana Susan Jennings (Sue) and Shana Lee Wren (Shana), and the other petitioner in this case, Dana Anthony Berry, Sr. (Tony). Joan's fifth surviving child, Tommy Joe Glover, has not appeared in this litigation. Tony's case remains pending at the trial court level.

In 1986 Joan and her husband Robert Maynord (Robert) established The Maynord 1986 Family Trust (the Trust). They amended it once in 1992. Joan became the sole trustee when Robert died in 1993. After Robert's death Joan executed an additional 23 purported amendments and/ or restatements of the Trust. Joan purportedly executed the 17th through

24th amendments over a period of less than three years. Pursuant to at least the 16th amended version Appellant stood to receive a substantial inheritance as a beneficiary of the Trust. The purported 24th amended version of the Trust excludes Appellant as a beneficiary.

During the time preceding January 2013 Shana and Sue had assumed control of Joan's daily healthcare and finances. However, Shana and Sue were neglecting their mother's well-being. As a result, Appellant moved back to California to care for Joan at Joan's request. In fact, on March 13, 2013 Joan designated Appellant as the executor of Joan's estate, successor trustee of Joan's Trust, personal representative for Joan's health care disclosures and agent for Joan's finances.

Appellant lovingly cared for her mother until Shana and Sue succeeded in poisoning the well against Appellant by means of fraud and undue influence to get back in control of Joan's healthcare and finances. Shana and Sue intentionally alienated Appellant from Joan and bullied Appellant to leave Joan's home. Shana and Sue conspired to falsely convince Joan that Appellant was responsible for initiating litigation against Joan regarding real property that Joan owned in Texas and for having Joan's driving privileges revoked. Shana and Sue also fed Joan's paranoia by falsely convincing Joan that Appellant was mentally ill and

trying to harm the family. After Appellant was bullied to leave Shana and Sue reassumed control of Joan's care.

Shana and Sue had control of Joan's healthcare and finances during the next three years leading up to Joan's death when Joan executed the 17th through 24th amendments. During that time period Joan relied on Shana and Sue for continuous assistance and management of Joan's healthcare and finances.

During the time that Joan executed the 17th through 24th amendments Joan suffered from the following conditions. Joan suffered from approximately five bouts of cancer that affected her major organs. She also suffered from cirrhosis which often caused her confusion, personality changes and fatigue due to her liver's inability to remove toxic substances from her blood. Joan also suffered from encephalopathy which affected her brain and caused her severe cognitive impairment. Especially during the last three years of her life Joan was known to complain of difficulty thinking, concentrating, analyzing and remembering. She even forgot how to start a motorcycle despite having driven motorcycles for years. During this time period Shana and Sue intentionally alienated Joan from Appellant and other family members. It was during this time that Shana and Sue were ultimately successful in unduly influencing Joan to increase their inheritances and disinherit Appellant.

B. The Underlying Pleadings

Appellant's petition challenged the validity of the 17th through 24th amendments to the Trust on three grounds. In the first, Appellant alleged that Maynord was "not of sound and disposing mind" and thus lacked the "requisite mental capacity to amend the Trust." In the second, Appellant alleged undue influence on behalf of Shana who received a large share from the Trust. In the third appellant alleged fraud on behalf of Shana, relying on similar facts as in the second ground. Appellant included a lengthy factual recitation of the facts she alleged led to her disinheritance. Appellant additionally petitioned for removal of the trustee, imposition of a constructive trust on assets and proceeds of the Trust and for an accounting.

Appellant alleged that she was a person interested in both the devolution of her mother's estate and the proper administration of the Trust because Appellant is both an heir at law, former beneficiary and successor trustee of the Trust before the purported amendments.

C. Motion to Dismiss

Respondents filed an answer to appellants petition and a motion to dismiss Appellants petition pursuant to Probate Code 17200 and 17202. Respondent's motion to dismiss argued that Appellant lacked standing under Probate Code 17200 because she was neither a beneficiary nor a trustee of the trust as constituted under the 24th amendment. Appellant

opposed the motion and argued that she was a beneficiary under the 16th amendment and alleged that the later versions of the trust were invalid. The trial court dismissed Appellant's petition for lack of standing. Appellant brought a motion for reconsideration of the ruling dismissing her petition and attached a proposed amended petition including additional facts relevant to her claim that the later amendments were invalid and additional grounds for setting aside the amendments. The trial court denied Appellant's motion for reconsideration and Appellant filed a timely appeal.

D. The Court of Appeal's Decision

The Fifth Appellate District affirmed the trial court's order dismissing Appellant's petition for lack of standing, holding that the law is clear that only a trustee or currently named beneficiary have standing to challenge the terms of the trust in probate court. The Fifth Appellate District held that a former beneficiary of a trust who no longer has any interest in the trust lacks standing under Probate Code 17200 to challenge the validity of the amendments that disinherited her.

ARGUMENT

I. REVIEW IS NECESSARY TO ENSURE THAT PROPER SAFEGUARDS ARE IN PLACE TO PROTECT THE INTENDED VICTIMS OF FRAUD AND UNDUE INFLUENCE.

California's judicial system is fundamentally flawed if disinherited trust beneficiaries cannot find a court to hear their claims on the merits.

Civil Code 3523 states "for every wrong there is a remedy." It surely cannot be the case that a beneficiary in Appellant's position loses standing before the validity of the amendments that disinherited her can be tested. If a beneficiary who is written out of an amended trust is denied standing to challenge that amendment, the victims of invalid trust amendments would rarely, if ever, be allowed to "right the wrong." Meanwhile, those who exploit mental incapacity, exert undue influence, and commit fraud to increase their share of a trust would be free to do so with impunity. Such an interpretation of standing under Probate Code 17200 would create a perverse incentive to exploit susceptible trust settlors.

The California Supreme Court has long recognized that any policy disfavoring will contests is countered by the right of a citizen to have their claim determined by law. (*Lobb* v. *Brown* (1929) 208 Cal. 476, 490-491; *Gregge* v. *Hugill* (2016) 1 Cal.App.5th 561, 569-570). The California Supreme Court in in *Lobb* recognized that public policy demands that a full and complete opportunity should be given to all interested parties to test the validity of such a testamentary document, not only to protect that which may be rightfully and legally theirs, but also to preserve the wishes and desires of the decedent against persons seeking to take advantage of her age and infirmities which are the usual result of advanced years. (*Lobb* at 491-492).

Over the past 30 years the use of revocable living trusts has rightly become the preferred estate planning vehicle for persons seeking to protect and pass on their estates. Therefore, disinherited trust beneficiaries should be afforded the same rights as those afforded to will contestants. Extending the same rights to disinherited trust beneficiaries protects not only that which may rightfully and legally be theirs, but also protects the trustors wishes and prevents persons from taking advantage of age and infirmities which are the usual result of advanced years.

II. REVIEW SHOULD BE GRANTED TO CONFIRM THAT PROBATE COURTS MAY HEAR ALL TRUST CONTESTS.

The Fifth Appellate District erroneously held that disinherited beneficiaries of a trust lack standing to bring trust contests in probate court. The Fifth Appellate District's conclusion rested on that court's erroneous pronouncement – the first of its kind by a California appellate court – that some trust contests must be filed in civil court and other trust contests may be filed in probate court. That holding departed from the well-established practice that all beneficiaries may file trust contests in probate court. Because the Fifth Appellate District's holding will be binding on all trial courts throughout the state of California absent this Court's review, it is essential that this Court grant review.

The Fifth Appellate District's approach is incorrect because probate courts have exclusive jurisdiction to hear cases regarding the internal affairs of trusts. (*Saks* v. *Damon Raike & Co* (1992) 7.Cal.App.4th 419, 429). The Law Revision Commission Comment to Probate Code 17000(b) states, "it is intended that the department of the superior court that customarily deals with probate matters will exercise the exclusive jurisdiction relating to internal trust affairs provided by subdivision (a)." (Cal. Law Revision Com., 54A West's Ann. Prob. Code (1991 ed). 17000, p. 182). There is no matter more essential to the internal affairs of a trust than whether the operative instrument is in fact valid or not. Furthermore, probate departments are best equipped to hear complicated trust contests. Disinherited beneficiaries who may have been the target of fraud or undue influence should be afforded the opportunity to have their claims heard in probate court because probate courts are best equipped to hear their claims.

A. DISINHERITED BENEFICIARIES HAVE STANDING TO CONTEST ILL-GOTTEN TRUSTS IN PROBATE COURT.

The Fifth Appellate District's decision applies an extremely narrow interpretation of Probate Code 17200. The Fifth Appellate District's decision states that only beneficiaries and trustees have standing to contest a trust in probate court under Probate Code 17200. (Opn. at pp 5-6). The Fifth Appellate District's interpretation directly conflicts with Probate Code 24 which states that a beneficiary means a person to whom a donative

transfer of property is made or that person's successor in interest, and as it relates to a trust, means a person who has any present or future interest, vested or contingent. Here, based on the plain language of Probate Code 24 disinherited beneficiaries should have standing to bring a petition under Probate Code 17200 because their future interest will be contingent on whether the later instrument is invalidated or not.

Practitioners often analogize wills to trusts. Now that trusts are commonly used planning instruments there is no reason to draw strict distinctions between the vast body of law on will contests and the limited body of law on trust contests. To have standing to contest a will requires nothing more than being an "interested person". (*Estate of Sobol* (2014) 225 Cal.App.4th 771, 781). Probate Code 48 pertains to estates and broadly defines an interested person as 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. Probate Code 48 subdivision 3(b) further broadens 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. Probate Code 48 is designed to provide the probate court with flexibility to control its proceedings both to further the

best interests of the estate and protect the rights of interested persons to those proceedings. (*Estate of Maniscalco* (1992) 9 Cal.App.4th 520, 523-524). It is well established that contestants of a decedent's will have standing to contest if they stand to benefit by setting aside the will. (*In re Estate of Land* (1913) 166 Cal. 538, 543).

In *Bridgeman* v. *Allen* (2013) 219 Cal.App.4th 288 the court did not directly rule on whether a disinherited beneficiary has standing to contest a trust under Probate Code 17200, however, the court rejected the contention that a disinherited beneficiary lacks standing to appeal an order dismissing his petition for lack of standing. (*Id.* at 292). The Court stated, "We need not, and do not, address the issue of Edward's standing to bring the underlying action." (*Id*). The court did not need to rule on the underlying trust contest because the contestant failed to file the contest within the required 120 days.

In *David* v. *Hermann* (2005) 129 Cal.App.4th 672, 678-79 the settlor disinherited her eldest daughter Susan. Susan filed a petition to invalidate the trust based on incapacity and undue influence. (*Id.* at 679). Even though Susan was not a beneficiary under any version of the trust the appellate court noted, "We construe Susan's petition...as a proceeding...under Probate Code section 17200, subdivision (b)(3)." (*Id.* at 683). Although the *David* v. *Hermann* opinion doesn't directly address

standing, the opinion implies that even a party such as Susan, who was never a beneficiary of the trust, still has standing under Probate Code 17200 if they stand to benefit from a successful challenge.

Therefore, it is implied that disinherited trust beneficiaries have standing to bring trust contests under Probate Code 17200.

III. REVIEW SHOULD BE GRANTED TO AVOID THE CREATION OF A TWO-TIERED JUDICIAL SYSTEM FOR TRUST CONTESTS.

The Fifth Appellate District's interpretation of Probate Code 17200 creates a two-tiered judicial system for trust contests because it forces nearly identical groups of litigants to file in two separate divisions of the superior court. Pursuant to the Fifth Appellate District's decision litigants who are completely disinherited must file their claims in civil court. However, litigants whose interests were diminished to as little as 1% are still permitted to bring their trust contests in probate court. This is an inequitable result for the below reasons.

A. CIVIL COURTS DON'T HAVE JURISDICTION OVER TRUSTEES, THEREFORE, DISINHERITED BENEFICIARIES WILL LOSE ALL REMEDIES AVAILABLE UNDER THE PROBATE CODE.

As stated above, probate courts have exclusive jurisdiction to hear cases regarding the internal affairs of trusts. (*Saks*, *supra*, 7.Cal.App.4th 419, 429). Therefore, probate courts have exclusive jurisdiction over trustees. The probate court's powers are broad and sweeping. For

example, Probate Code 17206 states that the probate court may, in its discretion, make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

Frequently trust contests include claims against the trustee for illegal acts. If disinherited beneficiaries are barred from probate court they'll lose the right to equitable probate remedies against the trustee until after they prove their standing under Probate Code 17200 by invalidating the trust. The following remedies are exclusively available in probate court: a finding that the trustee breached their duties, compelling the trustee to perform their duties, enjoining a trustee from committing a breach of trust, compelling the trustee to redress a breach of trust by paying money, restoring money or restoring property, ordering a trustee to account, appointing a temporary trustee to take hold of the property during the trust contest, suspending a trustee, reducing a trustees compensation or imposing a lien or constructive trust on trust property, and tracing trust property wrongfully disposed of and recovering the proceeds.

Often a trust contest will turn based on equitable orders made by the probate court during the pendency a trust contest. For example, whether a trustee can use trust funds to litigate a trust contest is often a hotly contested issue that may determine the outcome of the trust contest. For

example, the trustee may have millions of dollars in trust funds that they can access to fund litigation against beneficiaries whereas beneficiaries must pay out of pocket. In *Terry* v. *Conlan* (2005) 131 Cal.App.4th 1445 the court held that a trustee should remain neutral if a beneficiary is merely contesting one or more amendments of a trust as opposed to defending the validity of the underlying trust. (*Id.* at 1462, 1464). The trustee is bound by their duty of impartiality to serve as a neutral placeholder while the beneficiaries litigate who will receive what at their own cost. Under the Fifth Appellate District's approach, disinherited beneficiaries are barred from seeking an order under *Terry* v. *Conlan* instructing the trustee not to use trust funds to defend the ill-gotten amendment. This puts disinherited beneficiaries at an inherent disadvantage and beneficiaries with merely diminished interests at an advantage. There is no rational reason to draw such a distinction.

IV. REVIEW SHOULD BE GRANTED TO RESOLVE CONFLICT AMONG COURT OF APPEAL DECISIONS AS TO WHETHER DISINHERITED BENEFICIRIES LOSE STANDING TO CONTEST A TRUST IN PROBATE COURT.

The Fifth Appellate District's decision is the only published decision that directly addresses whether a disinherited beneficiary has standing to contest a trust under Probate Code 17200. However, there are various unpublished decisions that directly address this issue. Three of the

unpublished decisions that are discussed below find that disinherited beneficiaries have standing under Probate Code 17200 whereas one unpublished decision discussed below agrees with the Fifth Appellate District that disinherited beneficiaries lack standing to contest under Probate Code 17200. Supreme Court review is necessary to secure uniformity of decisions and resolve confusion in the lower courts.

Halverson v. *Vallone* is an unpublished decision out of the Sixth Appellate District that came to the opposite conclusion of the Fifth Appellate District. *Halverson* v. *Vallone* (2006) Cal.App.Unpub Lexis 10447. The Sixth Appellate District found that, "Standing for the purposes of the Probate Code is a fluid concept dependent on the nature of the proceeding before the trial court and the parties' relationship to the proceeding as well as to the trust (or estate). This means that before the issue of standing can be resolved, we must understand the nature of the proceedings so that we may determine the parties' relationship to it. As a practical matter, standing and the merits are closely tied, and it is often necessary to come to terms with the substantive claim before the issue of standing can be resolved" (*Id.* at 13). In *Halverson* v. *Vallone* the Sixth Appellate District found that it was sufficient that the contestant of the trust demonstrate that his or her interest may be impaired and need not show that his or her interest will necessarily be impaired. (*Id.* at 9, 14). The Court

ultimately concluded that the contestant made a prima facie showing that he was an heir because he would gain a pecuniary interest if his challenge was successful. (*Id.* at 29, 30).

Portero-Brown v. *Javaheri* is an unpublished decision out of the First Appellate District that also found the opposite of the Fifth Appellate District. (*Portero-Brown* v. *Javaheri*, 2018 Cal.App.Unpub Lexis 4231). The contestant in *Potrero-Brown* v. *Javaheri* filed a petition to invalidate the trust based on lack of capacity, mistake and undue influence. (*Id.* at 5). The First Appellate District found that the disinherited beneficiary had standing to contest the trust if they were an intestate heir. (*Id.* at 6). The First District plainly stated, "Plaintiff has standing if he is a child of the decedent entitled to a share of his property by the laws of intestacy if the trust is invalidated." (*Id.* at 6).

Hernandez v. Kieferle is an unpublished case out of the Second Appellate District, Division Four that also found the opposite of the Fifth Appellate District. *Hernandez* v. *Kieferle* (2014) Cal.App.Unpub Lexis 2385 In a footnote to the decision the Second Appellate District explicitly states, "To establish standing to challenge a will or trust, the contestant is required only to make a prima facie showing of an interest in the estate under some testamentary instrument, and need not demonstrate the validity of that instrument." (*Id.* at 23-24 fn. 13). The Second Appellate District

cites to *Estate of Plaut* (1945) 27 Cal.2d 424, 428. *Estate of Plaut* involves a will contest where the California Supreme Court held that a party may contest a will if they have at least established a prima facie interest in that estate even if they may ultimately not receive any part of the estate. (*Id.* at 428).

Chaleff v. *Runkle* is an unpublished case out of the Second Appellate District, Division Six that came to the same conclusion as the Fifth Appellate District. (*Chaleff* v. *Runkle* (2008) Cal.App.Unpub Lexis 7003). In *Chaleff* v. *Runkle* two disinherited trust beneficiaries brought a trust contest based on undue influence, lack of capacity and fraud. (*Id.* at 1). The Second Appellate District, Division Six stated, "We are unable to determine from the record whether there has been a judicial determination as to the appellants' allegations of lack of capacity and undue influence." (*Id.* at 9). Despite no finding regarding the decedent's susceptibility to fraud or undue influence the court upheld the order dismissing the disinherited beneficiaries' trust contest. (*Id* at 9). The Court stated, "Our threshold consideration is whether appellants have standing to file a petition pursuant to section 17200. The statute expressly allows a 'trustee or beneficiary' to petition the court. Appellants are neither. They are third parties, wholly unrelated to the administration of the trust, who are claiming an interest in the decedent's estate." (*Id.* at 10). The court ultimately held, "Appellants

lacked standing to file the petition. Moreover, their petition did not concern the internal affairs of the trust. Rather, it involved matters outside the trust-the decedent's mental capacity and allegations of undue influence. Dismissal was proper because the proceeding was not reasonably necessary for the protection of the interests of the trustee or beneficiary." (*Id.* at 10). Here the court came to the opposite conclusion of the *Halverson* v. *Vallone*, *Portero-Brown* v. *Javaheri* and *Hernandez* v. *Kieferle* courts.

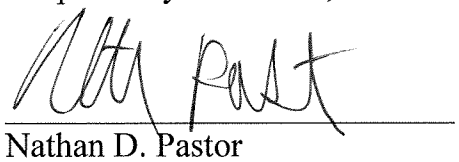
Supreme Court review is necessary to resolve the above stated conflicts in the lower courts. The Supreme Court should ultimately adopt the approach of the *Halverson* v. *Vallone*, *Portero-Brown* v. *Javaheri* and *Hernandez* v. *Kieferle* courts.

CONCLUSION

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

Dated: October 18, 2018

Respectfully submitted,



Nathan D. Pastor
State Bar No. 299235
Attorney for Petitioner and Appellant
Joan Mauri Barefoot

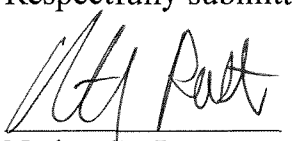
CERTIFICATION OF WORD COUNT

I, Nathan D. Pastor, hereby certify in accordance with California Rules of Court, rule 8.504(d)(1), that this brief contains 5167 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: October 18, 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 October 18, 2018, I served true copies of the foregoing document(s) described as:

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 Tuolomne
Honorable Kate Powell Segerstrom
60 N Washington Street
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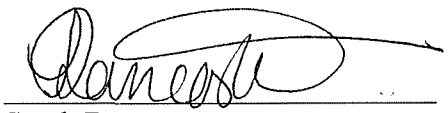
[X] BY US MAIL
I caused the above referenced document(s) to be delivered via US MAIL for delivery to the above addresses.

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

Executed on October 18, 2018, at Walnut Creek, California.



Sarah Dancaster

EXHIBIT A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JOAN MAURI BAREFOOT, Petitioner and Appellant, v. JANA SUSAN JENNINGS et al., Defendants and Respondents.	F076395 (Super. Ct. No. PR11414) **OPINION**

APPEAL from a judgment of the Superior Court of Tuolumne County. Kate Powell Segerstrom, Judge.

The Singhal Law Firm and Dinesh H. Singhal for Petitioner and Appellant.

Gianelli & Associates, Eric T. Nielsen and Sarah J. Birmingham for Defendants and Respondents.

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Appellant Joan Mauri Barefoot appeals following the trial court's decision to dismiss her petition under Probate Code section 17200[1] to, among other things, set aside the 17th through 24th amendments and declare effective the 16th amendment to the Maynord 1986 Family Trust (Trust). The trial court dismissed the petition on standing grounds. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

According to the petition, appellant is one of six children of Joan Lee Maynord. Maynord and her former husband, who died in 1993, established the Trust in 1986 and Maynord served as the sole trustor following her husband's death. Respondents are two more of Maynord's children, with Shana Wren serving as the current trustee of the Trust. The remaining three children, one of whom predeceased Maynord, are not a part of this litigation.

In or around August 2013 and continuing through 2016, Maynord executed a series of eight amendments to and restatements of the Trust, referred to as the 17th through the 24th amendments. The 24th amendment was the final amendment prior to Maynord's death. In these amendments and restatements, appellant's share of the Trust, as set out in the 16th amendment, was eliminated and appellant was both expressly disinherited and removed as a successor trustee. At the same time Wren was provided with a large share of the Trust and named successor trustee.

Appellant's petition challenged the validity of these amendments on three grounds. In the first, appellant alleged Maynord was "not of sound and disposing mind" and thus lacked the "requisite mental capacity to amend the Trust." In the second, appellant alleged undue influence on behalf of respondents and included a lengthy factual recitation of the family dispute she believed led to her disinheritance. In the third,

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1 All further statutory references are to the Probate Code unless otherwise stated.

appellant alleged fraud on behalf of respondents, relying on similar facts as in the second ground. Appellant further attached the 16th and 24th amendments.

With respect to her standing to file the petition, appellant alleged she was "a person interested in both the devolution of [Maynord's] estate and the proper administration of the Trust because [appellant] is [Maynord's] daughter and both the trustee and a beneficiary of the Trust before the purported amendments. She will benefit by a judicial determination that the purported amendments are invalid, thereby causing the Trust property to be distributed according to the terms of the Trust that existed before the invalid purported amendments."

Respondents filed an answer to appellant's petition and followed that with a motion to dismiss pursuant to sections 17200 and 17202. As part of their motion, respondents argued appellant lacked standing under section 17200 because she was neither a beneficiary nor a trustee of the Trust as constituted under the 24th amendment. Appellant opposed the motion by arguing she was a beneficiary under the 16th amendment and alleging that later versions of the Trust were invalid. The trial court ultimately sided with respondents and dismissed appellant's petition without prejudice. Appellant responded by seeking reconsideration of the ruling and attaching a proposed amended petition including additional facts relevant to her claims the later amendments were invalid and additional grounds for setting aside the amendments. The trial court denied appellant's request and this appeal timely followed.

DISCUSSION

Standard of Review and Applicable Law

Section 17200, subdivision (a) provides, "Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust." Under section 24,

subdivision (c), a beneficiary of a trust is "a person to whom a donative transfer of property is made" and "who has any present or future interest, vested or contingent."

"Property transferred into a revocable inter vivos trust is considered the property of the settlor for the settlor's lifetime. Accordingly, the beneficiaries' interest in that property is ' "merely potential" and can "evaporate in a moment at the whim of the [settlor]." ' " (*Estate of Giraldin* (2012) 55 Cal.4th 1058, 1065–1066.) Unless expressly made irrevocable, trusts are revocable by the settlor by compliance with any method of revocation provided in the trust or by a writing signed by the settlor and delivered to the trustee during the lifetime of the settlor, among others. (§§ 15400, 15401.)

We review issues of standing, particularly those dependent upon a statutory authority to sue, de novo. (*Babbitt v. Superior Court* (2016) 246 Cal.App.4th 1135, 1143.)

Appellant Lacks Standing Under Section 17200

Appellant's petition alleges standing exists because she was a beneficiary and trustee of a prior version of the Trust. We conclude this basis is insufficient to support a petition under section 17200.

In interpreting the statute, we " ' "begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." [Citations.] The plain meaning controls if there is no ambiguity in the statutory language.' [Citation.] In interpreting a statutory provision, 'our task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.' " (*Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1384–1385.)

The plain language of section 17200 makes clear that only a beneficiary or trustee of a trust can file a petition under section 17200. A beneficiary is further defined by statute as one that receives a present or future interest, whether vested or contingent, through a donative transfer from the trust. Under the 24th amendment of the Trust, appellant is not a beneficiary as she is expressly disinherited under that document and is not named as a trustee. She thus lacks standing to proceed with a petition under section 17200 attacking that trust.[2]

Appellant seeks to avoid this outcome by arguing her petition actually arises under the 16th amendment, where she allegedly qualifies as both a beneficiary, provided with a substantial future transfer, and a trustee. Appellant alleges that proceeding as if the 17th through 24th amendments are valid, in light of her allegations they are not, assumes respondents will prevail on the merits and is inappropriate at such an early stage of the proceedings. We do not agree.

Appellant has invoked a specific proceeding under the Probate Code designed to allow beneficiaries and trustees operating under a trust agreement to resolve their disputes in court despite the fact that "[t]he administration of trusts is intended to proceed expeditiously and free of judicial intervention." (§ 17209.) Separate proceedings against the trustee in his or her official or personal capacities are already available to resolve disputes regarding the validity of proffered trust agreements and are not foreclosed by the existence of section 17200. (See *Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1349–1350, 1358 [where plaintiffs brought complaint alleging causes of action similar to the allegations in this case and defendant was not harmed by failure to file under section 17200].) Further, in appellant's petition she admits that the most current version

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2 Appellant's detailing of all the reasons why she has standing under various other statutes demonstrates cleanly that appellant's chosen vehicle was improper. A complaint alleging the same causes of action would not be barred by the beneficiary limitation of section 17200.

of the Trust's governing documents is contained in the 24th amendment, but alleges through the petition that those provisions should be set aside. In this way, appellant is not seeking to resolve disputes regarding the internal affairs of the 16th amendment. Indeed, absent a judicial declaration that later versions are invalid, the 16th amendment no longer exists as a valid trust document. Rather, appellant is contesting the internal affairs of the 24th amendment, seeking to upend the instructions contained therein because they were inappropriately preceded by mental incapacity, fraud, and undue influence.

We likewise find the cases appellant relies upon to argue section 17200 extends to beneficiaries existing only under prior versions of contested trusts unpersuasive. The plain language of section 17200 demonstrates that only beneficiaries and trustees of the current trust version have standing to petition for review of the internal affairs of that trust. As any potential interest in an inter vivos trust is subject to the whim of the settlor, it would be imprudent to open challenges to the internal workings of the current trust to those no longer included in the most current version of the trust when such individuals have alternative methods of seeking relief should they allege foul play.

We note that appellant's most analogous case, *Drake v. Pinkham* (2013) 217 Cal.App.4th 400, does not foreclose our conclusion here. In *Drake*, a former beneficiary filed a petition under section 17200 alleging more recent amendments to a trust were invalid due to a lack of capacity by the settlor and undue influence by the new trustee. (*Drake*, at pp. 404–405.) The court of appeal reviewed the former beneficiary's prior knowledge of amendments and found the defense of laches applied to preclude her current petition. (*Id.* at pp. 406–407.) In this analysis, the Court of Appeal noted that the former beneficiary argued laches could not apply because she was barred from challenging the amendments under sections 17200 and 15800 while the settlor was alive. (*Drake*, at p. 407.) The court found, however, that while section 15800 precluded suits by beneficiaries while the settlor was competent, allegations of incompetence were

sufficient to overcome this bar. (*Drake,* at pp. 408–409.) Thus, the court noted, where one alleges incompetence, they retain " 'the usual rights of trust beneficiaries' " under the relevant statutes. (*Id.* at p. 409.)

Our ruling here comports with the general conclusion in *Drake* that claims of incompetence provide beneficiaries with their usual rights when challenging trusts. *Drake* stands for the unremarkable position that an allegation of incompetence provides sufficient grounds for a beneficiary of a trust to proceed with a petition under section 17200, while noting that the beneficiary will ultimately have to demonstrate incompetence to maintain their standing. It does this by rejecting the claim that a settlor's status as living wholly precludes any opportunity to challenge the trust. What *Drake* does not do is suggest a former beneficiary can proceed under section 17200.

While the former beneficiary in *Drake* raised section 17200 in her defense against a laches finding, the court's analysis of the laches issue made no mention of the proper vehicle to proceed when a former beneficiary is contesting later trust amendments. The court merely concluded that those raising challenges based on incompetence are not barred from proceeding while the settlor lives. Thus, under *Drake*, if appellant had raised her claims of incompetence when she alleges Maynord became incompetent—at a point when appellant was still a beneficiary—appellant could have proceeded under section 17200. Relatedly, if she raised incompetence claims in a complaint following her removal as a beneficiary, a point in time allegedly three months after the amendment providing her with a large potential gift under the Trust, she likewise would not have lacked standing under section 15800 on grounds the settlor was alive. But these hypotheticals do not affect whether a petition under section 17200 or a properly drafted complaint is the proper vehicle for pursuing such claims after the settlor's death. As section 17200 provides a narrowly defined right only to beneficiaries and trustees of the contested trust, the conclusion in *Drake* that a living but incompetent settlor is not a bar

to a beneficiary's lawsuit does not demonstrate a former beneficiary challenging the latest version of a trust is entitled to proceed because of their status in the last allegedly valid former trust document. As noted above, in such a situation the challenge is brought against the validity of the most recent version of the trust and, therefore, a former beneficiary lacks standing to petition for relief under section 17200.

DISPOSITION

The order is affirmed. Costs are awarded to respondents.

HILL, P.J.

WE CONCUR:

POOCHIGIAN, J.

MEEHAN, J.

Filed 9/10/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JOAN MAURI BAREFOOT, Plaintiff and Appellant, v. JANA SUSAN JENNINGS et al., Defendants and Respondents.	F076395 (Tuolumne Super. Ct. No. PR11414) **ORDER GRANTING REQUEST FOR PUBLICATION**

As the nonpublished opinion filed on August 14, 2018, in the above entitled matter hereby meets the standards for publication specified in the California Rules of Court, rule 8.1105(c), it is ordered that the opinion be certified for publication in the Official Reports.

HILL, P.J.

WE CONCUR:

POOCHIGIAN, J.

MEEHAN, J.