

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

In Re: Supreme Court Case No. S251574
Court of Appeal Case No. F076395
THE MAYNORD 1986 FAMILY TRUST, Established March 11, 1986
Superior Court Case No. PR11414

JOAN MAURI BAREFOOT,

Petitioner/Appellant,

v.

JANA SUSAN JENNINGS and
SHANA LEE WREN,

Respondents

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

**ANSWER TO PETITION FOR REVIEW BY JOAN MAURI
BAREFOOT**

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TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
RESPONDENTS’ ANSWER TO PETITION FOR REVIEW	5
I. INTRODUCTION.....	5
II. BACKGROUND.....	5
III. ARGUMENT	6
1. THE PLAIN LANGUAGE OF PROBATE CODE SECTION 17200 IS UNAMBIGUOUS.....	6
2. PETITIONER SEEKS AN AMENDMENT TO SECTION 17200.....	8
3. SECTION 17200 IS CONSISTENT WITH THE LEGISLATIVE POLICY CONCERNING TRUST PROCEEDINGS.....	8
4. GRANTING REVIEW IS NOT NECESSARY TO SECURE UNIFORMITY OF DECISION.....	10
IV. CONCLUSION	12
CERTIFICATE OF WORD COUNT	13
DECLARATION OF SERVICE BY U.S. MAIL	14
CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS..	15

TABLE OF AUTHORITIES

CASES

<i>Chaleff v. Runkle</i> (2008) Cal.App.Unpub. LEXIS 7003 (August 27, 2008)....	12
<i>Estate of Plaut</i> (1945) 27 Cal.2d 424, 428	11
<i>Halverson v. Vallone</i> (2006) Cal.App.Unpub. LEXIS 10447 (November 17, 2006)	11
<i>Hernandez v. Kieferle</i> (2014) Cal.App.Unpub. LEXIS 2385 (April 3, 2014).....	11
<i>Kobzoff v. Los Angeles County Harbor/UCLA Medical Center</i> (1998) 19 Cal.4 th 851, 861	7
<i>Lopez v. Sony Electronics, Inc.</i> (2018) 5 Cal.5 th 627, 633-34	6, 7
<i>McWilliams v. City of Long Beach</i> (2013) 56 Cal.4 th 613, 626	10
<i>Poole v. Orange County Fire Authority</i> (2015) 61 Cal.4 th 1378, 1384-1385.....	7
<i>Portero-Brown v. Javaheri</i> (2018) Cal.App.Unpub. LEXIS 4231 (June 19, 2018).....	11
<i>White v. Ultramar, Inc.</i> (1999) 21 Cal.4 th 563, 572.....	7

STATUTES

<i>California Code of Civil Procedure Section 44</i>	9
<i>California Rules of Court, Rule 8.500(b)(1)</i>	5
<i>Probate Code Section 24</i>	7, 9
<i>Probate Code Section 26</i>	7
<i>Probate Code Section 44</i>	7
<i>Probate Code Section 48</i>	7

<i>Probate Code Section 84</i>	7
<i>Probate Code Section 6453</i>	11
<i>Probate Code Section 15800</i>	6
<i>Probate Code Section 16060.5</i>	9
<i>Probate Code Section 17200</i>	5-12
<i>Probate Code Section 17200 (a)</i>	6
<i>Probate Code Section 17202</i>	6
<i>Probate Code Section 17206</i>	8
<i>Probate Code Section 17209</i>	8
<i>Probate Code Section 21351</i>	11

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

I. INTRODUCTION

The Court of Appeal's unanimous published opinion (the "CA Opinion") is correct and meets none of this Court's discretionary review standards. (Cal. Rules of Ct., Rule 8.500(b)(1).) Granting review is not "necessary to secure uniformity of decision" in this case because as Petitioner has correctly pointed out *Barefoot* is the only published opinion that addresses whether disinherited beneficiaries of a Trust have standing under Probate Code Section 17200. California law is, and will thus remain, absolutely uniform on that question.

II. BACKGROUND

On March 17, 2016, the late Joan Maynord ("Joan") specifically and unequivocally disinherited Petitioner by removing her as a beneficiary of her Trust estate pursuant to the operative Trust in place at Joan's passing (hereinafter referred to as the "Trust".) Petitioner is not a beneficiary of the Trust and she is not a Trustee of the Trust.

On February 17, 2017, Petitioner filed a Probate Code Section 17200 Petition (the "17200 Petition") in the probate division of the Tuolumne County Superior Court notwithstanding her lack of legal standing to do so. Petitioner sought to invalidate six separate trust amendments and restated trusts so that a several year-old trust that had been replaced and superseded by these various trust amendments and restatements could become the operative trust. The fatal flaw with the 17200 Petition is that the plain language of Probate Code Section 17200 makes clear that standing to file such a petition is limited to beneficiaries and/or trustees, and Petitioner is neither.

On June 23, 2017, Respondents Shana Wren and Jana Jennings (hereinafter “Respondents”) dutifully filed a Motion to Dismiss the 17200 Petition on behalf of the Trust pursuant to Probate Code Section 17202, and the lower court appropriately dismissed the 17200 Petition for lack of standing.¹ This dismissal was confirmed by the Fifth District Court of Appeals as set forth in the CA Opinion.

III. ARGUMENT

1. THE PLAIN LANGUAGE OF PROBATE CODE SECTION 17200 IS UNAMBIGUOUS.

Probate Code Section 17200(a) was specifically drafted to provide rights only to a trustee or a beneficiary of a trust. This code section states:

“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.” (Emphasis added).²

This Court’s fundamental task in interpreting a statute is to determine the Legislature’s intent and give effect to the law’s purpose. *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 633-34. In interpreting a statute, courts “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.” The plain meaning controls if there is no ambiguity in

¹ Petitioner and Respondents are three of Joan Maynard’s six children, all six of whom have (or had) different fathers.

² Probate Code Section 15800 concerns revocable trusts and is inapplicable in this action as the Trust became irrevocable upon Joan’s passing.

the statutory language. *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1384-1385. If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent. *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572; *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 861. Accordingly, if the statutory language is clear and unambiguous the Court's inquiry ends and resort to extrinsic sources to determine the Legislature's intent is unnecessary. (*Lopez* at 634.)

Probate Code Section 17200 (hereafter "Section 17200"), is unambiguous. It gives rights to two specific classes of individuals (i.e. beneficiaries and trustees), to petition the probate court regarding the internal affairs of a trust. Petitioner is neither a beneficiary nor a trustee of the Trust as she was expressly disinherited under the Trust, and therefore, Petitioner has no standing to invoke Section 17200.

Incredibly, Petitioner asks this court to not only ignore the unambiguous language and limited scope of Section 17200, but to also create an entirely new law by expanding the class of individuals beyond beneficiaries and trustees to include those that may have been disinherited under the operative trust document (i.e. heirs). This flies in the face of decades old well-reasoned and consistent case law precluding such a deviation from unambiguous statutory language.

If the Legislature intended to expand the class of individuals entitled to invoke Section 17200 it certainly could have and would have done so. "Heir.", along with "Beneficiary."; "Trustee."; "Interested Person."; "Child.", etc. are among the many specifically defined classes of individuals under the California Probate Code. (Probate Code Sections 44, 24, 84, 48, and 26 respectively.) Put differently, there were several classes of individuals for the Legislature to pick and choose from when Section

17200 was drafted, *but*, they chose only two (beneficiaries and trustees), and in doing so, the Legislature unambiguously limited Section 17200's scope to these two classes.

The plain language of Section 17200 is patently clear, and this Court need not, and should not, go beyond that pure expression of legislative intent to insert classes of individuals the Legislature intentionally excluded.

2. PETITIONER SEEKS AN AMENDMENT TO SECTION 17200.

Petitioner concedes that Section 17200 is unambiguous and concedes that *Barefoot* is the only published opinion to address this issue. This is not a matter that is appropriate for this Court's review. This is a matter that is appropriate for legislative review, if at all. Petitioner uses the instant Petition to ask for the creation of an unprecedented expansion of an unambiguous statute (i.e. an amendment to Section 17200). Frankly, if Petitioner is looking for such an expansion, Petitioner needs to take this up with the Legislature as this is not the appropriate forum for such a request.

3. SECTION 17200 IS CONSISTENT WITH THE LEGISLATIVE POLICY CONCERNING TRUST PROCEEDINGS.

Expansion of the limited class of people able to invoke Section 17200 is not only precluded by the plain language of the statute but is wholly *inconsistent* with the legislative intent that the administration of trusts "...proceed expeditiously and free of judicial intervention..." (Probate Code Section 17209.) See also Probate Code Section 17206 that gives the court discretion to "...make any orders and take any other action necessary or proper to dispose of the matters presented by the petition..."

Indeed, the Legislature has expressly established that, on appeal, probate proceedings are entitled to calendar preference over most other matters. (California Code of Civil Procedure Section 44.)

Petitioner is not a beneficiary under the restated Trust as she was specifically disinherited.³ This is undisputed. Probate Code Section 24 defines a “Beneficiary” as “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.” The Trust does not provide a “donative transfer” to Petitioner. It provides the opposite – she was disinherited. Petitioner has no interest, whether present, future, vested, or contingent in any Trust property and is simply a third party that at one point in her life stood to gain under a trust that was later replaced and superseded by the operative Trust.

Petitioner asks this Court to ignore the unambiguous statutory language and effectively amend Section 17200 to expand the class of individuals entitled to invoke its provisions to include disinherited heirs. Petitioner argues, without any legal support, that ANY beneficiary under ANY version of an estate plan that may have been replaced and superseded ten times over (24 times in this case), can petition the court under Section 17200 concerning the internal affairs of a trust that they have nothing to gain from. This was not intended by our Legislature and certainly, trustees of trusts are not required to account to anyone and everyone who may have at some point in time stood to gain under a trust despite the fact that they may have been removed from the trust years or even decades earlier.

³ As set forth in Probate Code Section 16060.5, “...If a trust has been completely restated, ‘terms of the trust’ *does not include* trust instruments or amendments which are superseded by the last restatement before the settlor’s death...”

Section 17200 does not create some sort of “perverse incentive to exploit susceptible trust settlors” as suggested by Petitioner, rather, it is the vehicle that allows a trustee or a beneficiary of a trust to petition the court concerning the internal affairs of the trust in which they are expressly provided for.

4. GRANTING REVIEW IS NOT NECESSARY TO SECURE UNIFORMITY OF DECISION.

Petitioner cites four unpublished opinions and contends that three of those opinions conflict with *Barefoot*. Even if this were true, an unpublished opinion, by definition, cannot disturb the uniformity that now exists by virtue of *Barefoot*.

But in fact, there is no *bona fide* conflict between *Barefoot* and those three unpublished opinions. As this Court has observed, “[i]t is axiomatic that cases are not authority for propositions not considered.” *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 626. *Barefoot* holds that, based on Section 17200’s plain language, disinherited beneficiaries have no standing to bring a petition under Section 17200. None of Petitioner’s three unpublished opinions considered Section 17200’s language— let alone whether that language confers standing on disinherited beneficiaries. Instead the opinions simply assumed in passing that trust contests are subject to the same standing requirements as are will contests. The fourth unpublished opinion that Petitioner cites is the only one of the four that actually considered and analyzed Section 17200’s language and by Petitioner’s own admission, that opinion is consistent with *Barefoot*.

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The salient points about the four unpublished opinions are as follows:

- i. *Halverson v. Vallone*, 2006 Cal.App.Unpub. LEXIS 10447 (November 17, 2006): The estate plan at issue in this case consisted of both a trust *and* a will. (*Id.* at 4-5.) The Petitioner brought a petition to set aside not only the trust but also the will and argued that he had standing to bring the petition because he was “an heir and would take under the laws of intestate succession. Consequently, his rights may be impaired by probating the will or benefited by setting it aside.” (*Id.* At 9-10.) Like the Petitioner, the Court of Appeal did not distinguish between the standing requirements for contesting a trust and the standing requirements for contesting a will. Instead, the court analyzed the question of the Petitioner’s standing under the default interested-person standard applicable to will contests. (*Id.* At 11-18.) The case law on which the court relied addressed standing to bring will contests and/or standing to participate in Non-Section-17200 trust proceedings. The Court did not quote, let alone discuss, the language of Section 17200.
- ii. *Portero-Brown v. Javaheri*, 2018 Cal.App.Unpub. LEXIS 4231 (June 19, 2018): This opinion focused on whether the evidence introduced at the Trial Court established that the decedent had “openly held out” the Plaintiff as the child such that the decedent’s legal paternity could be established under Probate Code Section 6453. The Court of Appeal and everyone else assumed that if paternity was established, then the Plaintiff would have standing to contest the decedent’s trust under Section 17200. (*Id.* At 1-2.) But that assumption was not examined, nor was the language of Section 17200 quoted or discussed.
- iii. *Hernandez v. Kieferle*, 2014 Cal.App.Unpub. LEXIS 2385 (April 3, 2014): This opinion was about Probate Code Section 21351 and did not even mention Section 17200. Petitioner cites this case for its assertion, in footnote 13, that “[t]o 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 n. 13) In support of that assertion, *Hernandez*, cited *Estate of Plaut* (1945) 27 Cal.2d 424,

428. But *Plaut* was a will-contest case and did not purport to address standing to contest a trust. Not only did *Plaut* make no mention of Section 17200; it was decided more than four decades before Section 17200 was even enacted.

- iv. *Chaleff v. Runkle*, 2008 Cal.App.Unpub. LEXIS 7003 (August 27, 2008): Explaining that “[o]ur threshold consideration is whether appellants have standing to file a petition pursuant to Section 17200,” the Court of Appeal actually looked at the statutory language. (*Id* at 10.) The court recognized that “[t]he statute expressly allows a ‘trustee or beneficiary’ to petition the court”- and that the appellants “are neither.” (*Id.*) The Court correctly found that appellants were “...third parties, wholly unrelated to the administration of the trust, who are claiming an interest in the decedent’s estate.” and as such, did not satisfy Section 17200’s standing requirements. (*Id.* At 4.)

In summary, the only opinions that Petitioner contends conflict with *Barefoot* are three unpublished opinions that do not actually consider Section 17200’s language. And the only published opinion that *does* consider Section 17200’s language – the *Chaleff* decision – is entirely consistent with *Barefoot*. Far from identifying a lack of uniformity that requires this Court’s intervention, Petitioner has established the opposite.

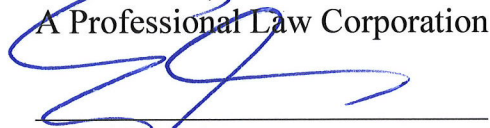
IV. CONCLUSION

For the foregoing reasons, Respondents request the Petition for Review be denied.

Dated: 11/08/18

Respectfully submitted,

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SHANA L. WREN and
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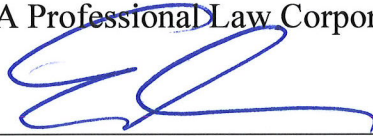
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I hereby certify that pursuant to California Rule of Court 8.204(c)(1) in reliance upon the word count feature of the software used, I certify that the attached contains 2222 words, exclusive of those materials not required to be counted under California Rule of Court 8.504(d)(3)

Dated: 11/08/18

Respectfully submitted,

GIANELLI | NIELSEN
A Professional Law Corporation



Eric T. Nielsen

DECLARATION OF SERVICE BY U.S. MAIL

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 November 8, 2018, I served one copy of the **ANSWER TO PETITION FOR REVIEW BY JOAN MAURI BAREFOOT** on the following persons by placing it in a sealed, postage-paid envelope to be sent through the U.S. mail in the regular course of business:

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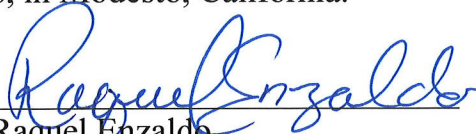
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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 8, 2018, in Modesto, California.


Raquel Enzaldo

CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS

I hereby certify that on November 8, 2018, I electronically filed the foregoing **ANSWER TO PETITION FOR REVIEW BY JOAN MAURI BAREFOOT** with the Supreme Court of California by using the TrueFiling system and that the following parties will be served by the Truefiling system:

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

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 certification was executed on November 8, 2018, in Modesto, California.


Raquel Enzaldo