

S224985

IN THE SUPREME COURT OF CALIFORNIA

TODD A. FREALY, Petitioner,

v.

RICK H. REYNOLDS et al., Respondents.

SUPREME COURT
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Question Certified from the En Banc United States Court of Appeals
for the Ninth Circuit, 9th Cir. No. 12-60068

After Opinion by the United States Bankruptcy Appellate Panel
of the Ninth Circuit, BAP No. CC-11-1433-HPaD

On Appeal from the United States Bankruptcy Court, C. D. Cal.
Bankr. Case No. 09-14039-MJ; C.D. Cal. Bankr. Adversary Case
No. 09-01205-MJ; Hon. Meredith A. Jury

PETITIONER'S REPLY BRIEF ON THE MERITS

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INTRODUCTION

Spendthrift trusts exist to allow individuals to help provide for the legitimate educational and support needs of their relatives and other dependents, not simply as a means to allow privileged trust fund beneficiaries to evade their creditors.

For this reason, the Legislature enacted Probate Code Sections 15300-15309 to strike a reasonable balance between the rights of a beneficiary's creditors, the trustor, and a beneficiary's legitimate need for financial support. Section 15306.5 deals with the rights of general creditors to enforce a money judgment against a beneficiary's interest in a spendthrift trust, and caps the total amount general creditors can reach under that Section at 25 percent.

At the same time, the Legislature recognized that there would be situations where—to prevent potential abuse and inequities—creditors should be permitted to reach more than the 25 percent amount available under Section 15306.5. These include situations where the trust corpus is being depleted through principal distributions (§ 15301, subd. (b)), where an individual seeks to shield his or her own assets from creditors by placing them into a spendthrift for his or her own benefit (§ 15304), where the creditor holds a spousal or child support judgment (§ 15305), where the creditor holds a criminal restitution judgment (§ 15305.5), where the creditor is a public entity seeking reimbursement of public support furnished to the beneficiary (§ 15306), and, perhaps most fundamentally, where the

beneficiary simply does not need the money from the trust for his or her education and support (§ 15307).

Under any fair reading of the statute, the Legislature did not intend for the 25 percent cap in Section 15306.5 to apply to these other Sections. Reading Section 15306.5 in this manner would directly undermine the fundamental purpose of the statute, render the other exceptions meaningless, and effectively sanction the exact type of abuses that the Legislature sought to prevent by enacting Probate Code Sections 15301, subdivision (b), and 15304-15307.

This Court should find that, read in the context of the overall statutory framework, the 25 percent cap in Section 15306.5 applies solely to claims brought under that Section, and does not limit creditors' rights under other Probate Code Sections. The Court should also find that Probate Code Section 15301, subdivision (b), allows a judgment creditor to reach a judgment debtor's interest in a principal distribution to be made from a spendthrift trust. Finally, the Court should find that Probate Code Section 15307, which allows creditors to reach "any amount to which the beneficiary is entitled under the trust" that exceeds what is "necessary for the education and support of the beneficiary," applies to both income and principal.

ARGUMENT

Respondent Rick H. Reynolds did not file an Answering Brief. Instead, the sole Answering Brief in this matter was filed by John M. Carmack, the trustee of the Reynolds Family Trust. As explained in

detail below, Carmack's arguments vary in some material respects from those previously asserted by Reynolds.

First, Carmack essentially acknowledges that the language of Probate Code Section 15306.5 is insufficient by itself to make the 25 percent cap in that Section applicable to other Probate Code Sections. (Carmack's Answering Brief ("AB") at pp. 9-10.) Also, despite adopting Reynolds' "absolute cap" language throughout the Answering Brief, Carmack admits this argument is wrong, at least with respect to claims brought by support creditors under Section 15305, which Carmack concedes are not subject to the 25 percent cap under Section 15306.5. (*Id.* at p. 7.) Rather than simply conceding the broader point, however, Carmack attempts to rescue Reynold's "absolute cap" argument by claiming that the 25 percent cap in Section 15306.5 is made applicable to the other Probate Code Sections "pursuant to" Code of Civil Procedure Section 709.010. (*Ibid.*)

In addition, unlike Reynolds, Carmack admits that Probate Code Section 15301, subdivision (b), was intended to allow creditors to reach a judgment debtor's interest in a principal distribution to be made from a spendthrift trust. (AB at p. 4.)

Finally, Carmack argues that Probate Code Section 15307 applies solely to surplus income, rather than applying to "any amount to which the beneficiary is entitled under the trust" as stated in the text of the statute. (AB at pp. 7-8.)

Each of these arguments is addressed below.

I. The 25 Percent Cap in Probate Code Section 15306.5 was Intended to Apply Solely to Claims Brought Under that Section, and Not to Limit Creditors' Rights Under Other Probate Code Sections.

The Ninth Circuit asked this Court to decide whether Probate Code Section 15306.5 imposes an absolute cap of 25 percent on creditors' access to a beneficiary's interest in a spendthrift trust or whether creditors can reach more than 25 percent under other Probate Code Sections.

As explained above, Carmack presents a novel argument on this issue that he contends has been overlooked by all seven federal judges that have previously considered this question. Specifically, Carmack contends that Code of Code of Civil Procedure Section 709.010 provides the key to understanding the Probate Code Sections at issue in this appeal, and that Section 709.010 incorporates the "absolute 25 percent cap" under Section 15306.5 and makes the cap applicable to all petitions filed under that Section. (AB at p. 1.)

A. Code of Civil Procedure Section 709.010 is Procedural in Nature and Expressly Does Not Alter the Substance of Probate Code Sections 15300-15309.

Carmack's reliance on Code of Civil Procedure Section 709.010 is misplaced. Section 709.010 provides the exclusive procedure for a creditor to enforce a judgment against a judgment debtor's interest as a beneficiary of a trust. (Code Civ. Proc., § 709.010, subd. (b).) The creditor must file a petition with the court having jurisdiction over the trust, at which point, the court may apply the judgment debtor's

interest in the trust to the satisfaction of the judgment by any proper means, "including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust property by the trustee." (*Ibid.*) The procedures outlined in Section 709.010 apply to all "trusts" as defined in Probate Code Section 82—not solely to spendthrift trusts. (Code Civ. Proc., § 709.010, subd. (a).)

Carmack's argument is based on Section 709.010, subdivision (c), which states:

Nothing in this section affects the limitations on the enforcement of a money judgment against the judgment debtor's interest in a trust under Chapter 2 (commencing with Section 15300) of Part 2 of Division 9 of the Probate Code, and the provisions of this section are subject to the limitations of that chapter.

(Code Civ. Proc., § 709.010, subd. (c).) In plain English, subdivision (c) states that nothing in Section 709.010 affects the rules governing spendthrift trusts under Probate Code Sections 15300-15309.

According to Carmack, however, this innocuous cross-reference to Probate Code Sections 15300-15309 actually means that every petition under Section 709.010 is "explicitly made subject to the limitations stated in Section 15306.5 of the Probate Code," which includes an "absolute 25 percent" cap on creditors' rights to reach the beneficiary's interest. (AB at p. 5.)

There are several problems with this analysis.

Primarily, Carmack's analysis conflicts with the plain language of the statute. Section 709.010, subdivision (c), incorporates Probate Code Sections 15300-15309 in their entirety—not one specific Section. The point of Section 709.010, subdivision (c), was to make it clear that Section 709.010 is subject to the rules governing spendthrift trusts set forth in Probate Code Sections 15300-15309. It was intended to make Section 709.010 consistent with the applicable Probate Code Sections, not to change their meaning or make one Probate Code Section applicable to the other Sections. Stated simply, Section 709.010, subdivision (c), provides that a petition under that Section is subject to the limitations set forth in Probate Code Sections 15300-15309—whatever those limitations are—nothing more or less.

This conclusion is also supported by the legislative history. According to the Law Revision Commission, the 1986 amendment to Section 709.010 was "technical" in nature and "[n]ew subdivision (c) [was] phrased to make it consistent with the new provisions added to the Probate Code. See Prob. Code §§ 15300-15309." (Selected 1986 Trust & Probate Legislation (Sept. 1986) 18 Cal. Law Revision Com. Rep. (1986) pp. 1471-72.) There is nothing in the legislative history of Section 709.010 to suggest that it was intended to change the meaning or legal effect of Probate Code Sections 15300-15309.

Essentially, Carmack reasons that (i) a petition under Section 709.010 is the exclusive procedure for any judgment creditor to enforce any rights against a trust beneficiary's interests and (ii) every petition under Section 709.010 is expressly made subject to

the 25 percent cap under Section 15306.5. This is obviously not true. If it were, even claims against trusts that do not contain a spendthrift clause would be subject to the 25 percent cap, which would be an absurd result.

Indeed, even Carmack concedes that the 25 percent cap does not apply to petitions to enforce spousal or child support judgments, despite the fact that support creditors (like all other creditors) are required to file a petition under Section 709.010 to enforce their rights. (AB at p. 7.) As a result, the analysis is obviously not as simple as: "Every petition under Section 709.010 is subject to an absolute 25 percent cap." Instead, the court must look to the substantive provisions of the Probate Code to make that determination. Code of Civil Procedure Section 709.010 merely provides the procedure for creditors to assert their rights and adds nothing to the substantive analysis.

B. Probate Code Section 15306.5, Subdivision (f), was Meant to Clarify that the 25 Percent Cap in Subdivision (b) Applies Where Multiple General Creditors Seek Orders Under that Section.

The answer to the question posed by the Ninth Circuit in this appeal comes down to whether the Legislature's failure to repeat the words "under this section" in Probate Code Section 15306.5, subdivision (f), was truly intended to create an absolute 25 percent cap on creditors' ability to reach a beneficiary's interest in a spendthrift trust under all circumstances. Read in isolation, it might be possible

to interpret the language of Probate Code Section 15306.5, subdivision (f), in this manner. However, the far better and more logical approach—and the one most consistent with the statute's overall objectives and legislative history—is that subdivision (f) was merely intended to address the situation where multiple general creditors obtain orders under that Section.

The Court's role in construing a statute is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*People v. Jenkins* (1995) 10 Cal.4th 234, 246 [40 Cal.Rptr.2d 903, 893 P.2d 1224].) "In determining the Legislature's intent, a court looks first to the words of the statute ..." and "gives the language its usual, ordinary meaning." (*People v. Snook* (1997) 16 Cal.4th 1210, 1215 [69 Cal.Rptr.2d 615, 947 P.2d 808].)

"The words, however, must be read in context, considering the nature and purpose of the statutory enactment.' [Citation.]" (*Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 777 [63 Cal.Rptr.2d 859, 937 P.2d 290].) "In this regard, sentences are not to be viewed in isolation but in light of the statutory scheme." (*Ibid.*) Courts "'do not consider ... statutory language in isolation.' [Citation.] Instead, [they] 'examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts.' [Citation.]" (*San Leandro Teachers Ass'n v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 831 [95 Cal.Rptr.3d 164, 209 P.3d 73], quoting *State Farm Mutual Automobile Ins. Co. v. Garamendi*

(2004) 32 Cal.4th 1029, 1043 [12 Cal.Rptr.3d 343, 88 P.3d 71].)

"Moreover, [courts] read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*Ibid.* (internal quotations omitted).)

As such, Probate Code Section 15306.5, subdivision (f), must be read "in context with the entire statute and the statutory scheme." (*In re Jennings* (2004) 34 Cal.4th 254, 263 [17 Cal.Rptr.3d 645, 95 P.3d 906].)

That process starts with the language of Probate Code Section 15306.5 itself. Subdivision (a) states that a judgment creditor may obtain "an order directing the trustee to satisfy all or part of the judgment" out of the payments to which the beneficiary is entitled from the trust. (Prob. Code, § 15306.5, subd. (a).) Subdivisions (b) and (c) limit a creditor's rights under subdivision (a). Under subdivision (b), "[a]n order under this section" may not require that the trustee pay more than 25 percent of the amount that would otherwise go to the beneficiary. (Prob. Code, § 15306.5, subd. (b).) Under subdivision (c), "[a]n order under this section" is subject to reduction below the 25 percent amount based on the support needs of the beneficiary and his or her dependents. (Prob. Code, § 15306.5, subd. (c).)

Read in this context, the reference in subdivision (f) to "the aggregate of all orders for satisfaction of money judgments against the beneficiary's interest" most logically refers to the same "orders" referenced in subdivisions (a), (b), and (c)—"orders under this

section." In other words, subdivision (f) was intended to clarify that the 25 percent cap under subdivision (b) applies where two or more general creditors obtain "orders under this section."

The alternative interpretation—that by failing to repeat the words "under this section" in subdivision (f), the Legislature intended to completely change the meaning of the word "orders" and create a blanket rule that limits creditors' rights under every other Probate Code Section—is unreasonable. If the Legislature truly intended to enact a sweeping rule limiting the rights of creditors under the other Probate Code Sections, it presumably would have done so expressly rather than by simply omitting three words from subdivision (f).

This conclusion is supported by the placement of the language in question. The general rules regarding restraints on the transfer of income and principal in spendthrift trusts are contained in Probate Code Sections 15300-15301. The exceptions to these general rules are spelled out in Probate Code Sections 15304-15307. Given this overall statutory structure, if the Legislature truly intended to create an "absolute 25 percent cap" on creditors' rights under all of the exceptions, it seems highly unlikely that the Legislature would bury this all-important language at the very end of Probate Code Section 15306.5, without any explanation or lead-up. It seems equally unlikely that none of the other Probate Code Sections would even mention the "cap" in Section 15306.5. The far more plausible interpretation is that Probate Code Section 15306.5, subdivision (f), applies solely to that Section.

This interpretation also fits best within the broader statutory context. As explained above, the Legislature enacted several specific exceptions to protections afforded by spendthrift trusts, each designed to address a different potential abuse. The "absolute cap" interpretation would render all of these other exceptions superfluous. (See *Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 345 [110 Cal.Rptr.3d 628, 232 P.3d 625] (holding that courts "must avoid interpretations that would render related provisions unnecessary or redundant").)

There would be no point in providing special protections to crime victims under Section 15305 or public entities seeking reimbursement of support payments under Section 15306 if these "preferred" creditors' rights are ultimately capped at 25 percent by Section 15306.5. (See 18 Cal. Law Revision Com. Rep., *supra*, at p. 1210 (explaining that claims under these other exceptions are intended to be "treated the same as a claim for child or spousal support").) Similarly, the prohibition on self-settled trusts under Section 15304 and the provision allowing creditors to reach principal distributions under Section 15301, subdivision (b), would essentially be rendered meaningless under the "absolute cap" interpretation. And finally, what purpose does Section 15307 serve if creditors' rights under that Section are limited to 25 percent? Interpreting Section 15306.5 in this manner would effectively write these other exceptions out of existence. This was obviously not the Legislature's intent.

The relevant legislative history strongly supports this view. In addition to the legislative history cited in the Opening Brief, the official Law Revision Commission comment to Section 15306.5 provides the following example:

Subdivision (f) limits the aggregate amount of the beneficiary's interest in one trust that is subject to enforcement where several creditors have obtained orders. Thus, if one creditor is receiving 25% of the payment that otherwise would have been made to the beneficiary, *a second general creditor* will not be able to reach any of the payment in the hands of the trustee. If one creditor is receiving 15%, *a second general creditor* can reach only 10% of the original amount of the payment.

(18 Cal. Law Revision Com. Rep., *supra*, at p. 1340 (emphasis added).) As this example indicates, Section 15306.5, subdivision (f), was intended to apply to the situation where multiple "general creditor[s]" obtain orders under that Section: There is nothing in the legislative history which suggests that subdivision (f) was intended to create an absolute cap on all creditors under other Probate Code Sections.

Finally, allowing creditors to reach more than 25 percent of a beneficiary's interest in a spendthrift trust under certain circumstances makes sense from a policy standpoint. As explained by the dissent in *In re Reynolds* (Bankr. 9th Cir. 2012) 479 B.R. 67:

[T]he California statutory scheme attempts to balance the rights of a beneficiary's creditors, the trustor, and a beneficiary's needs for financial support. Under the

Probate Code, a spendthrift trust may be created by a trustor to protect the payments to which the beneficiary may be entitled from the trust from the reach of the beneficiary's creditors. While this is an obviously valid legislative goal, absent exceptions to this general rule, the use of such trusts could prove abusive where beneficiaries with unpaid creditors have no legitimate need for trust distributions. To balance the scales, the California legislature allows creditors, in some cases, to reach some, or perhaps even all, of those distributions. For most creditors ..., that amount will be 25% of the distribution. However, the statutes allow either a creditor or the beneficiary to petition the state court and to perhaps persuade it, in the exercise of its discretion, to either increase or decrease the amount going to the creditor depending upon the beneficiary's financial needs.

(*Id.* at pp. 78-79.)

Under the proper interpretation, "[S]ection 15307 [and the other exceptions] play[] a critical role in protecting creditors' rights" (*In re Reynolds, supra*, 479 B.R. at p. 78-79.) "Spendthrift trusts are generally allowed, but they are subject to the exercise of judicial discretion to prevent them from being used to inequitably shield financially independent beneficiaries from the legitimate claims of creditors." (*Id.* at p. 79.)

As stated by the *Reynolds* dissent, "why would the California legislature favor a testator's goal of providing cash payments to a beneficiary over the rights of a beneficiary's creditors when the facts show that the beneficiary does not need the money?" (*Ibid.*) Similarly, "when according to the trust instrument, or in the trustee's

discretion, it is time to distribute principal to a beneficiary, why insulate those distributions from the claims of creditors of an affluent beneficiary?" (*Ibid.*) Allowing a beneficiary to utilize a spendthrift trust to avoid paying his or her debts under these circumstances amounts to "a bad, perhaps even an absurd policy." (*Ibid.*)

The *Reynolds* dissent was right. Section 15307 and the other exceptions "balance the scales" and provide legitimate creditor protections. Interpreting Section 15306.5, subdivision (f), to essentially invalidate those other exceptions directly undermines the Legislature's intent and is just plain wrong. This Court should conclude that the Legislature intended for the 25 percent cap in Section 15306.5 to apply solely to claims by general creditors under that Section, and not to limit creditors' rights under other Probate Code Sections.

II. Carmack Acknowledges that Probate Code Section 15301, Subdivision (b), Allows Judgment Creditors to Reach Principal Distributions Otherwise Due to the Beneficiary.

Carmack claims that "[t]here is no ambiguity associated with Probate Code Section 15301," and that "Probate Code Section 15301(b) was designed to give a judgment creditor of a spendthrift trust beneficiary certain rights to satisfy the judgment from principal distributions otherwise payable to the beneficiary" (AB at p. 9.)

On this narrow point at least, the parties agree: Section 15301, subdivision (b), was intended to allow creditors to intercept principal distributions payable to the trust beneficiary.

III. Probate Code Section 15307 Applies to Both Principal and Income.

The final issue the Court has been asked to address is the proper interpretation of Probate Code Section 15307. Carmack's Answering Brief touches on this issue briefly. (AB at pp.7-8.) Basically, Carmack agrees with the majority's analysis of this issue in *In re Reynolds, supra*, 479 B.R. at pp. 75-77. As explained below, there are fundamental flaws with the *Reynolds* majority's analysis of this issue.

The Court's analysis of Section 15307 should start—and in this case end—with the language of the statute itself. (See *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737 [21 Cal.Rptr.3d 676, 101 P.3d 563].) Section 15307 applies to "any amount to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined to pay to the beneficiary in excess of the amount that is or will be necessary for the education and support of the beneficiary" (Prob. Code, § 15307.)

Despite this seemingly clear language, the *Reynolds* majority concluded that Section 15307 applies solely to income from a spendthrift trust that exceeds the amount needed for the beneficiary's education and support. (*In re Reynolds, supra*, 479 B.R. at p. 77.)

The *Reynolds* majority claimed that this conclusion was compelled by two primary factors. First, the *Reynolds* majority reasoned that Section 15307 was ambiguous because "its title suggests that it provides creditors the ability to reach trust income," whereas "the text of the statute states that it applies notwithstanding restraints on both income and principal by its reference to 15300 or 15301." (*Id.* at p. 75.) Second, the *Reynolds* majority stated that adhering to the "literal meaning" of Section 15307 "would result in absurd consequences" because it would create a direct conflict with Section 15306.5 by allowing creditors to reach more than 25 percent of the beneficiary's interest in the trust. (*Id.* at p. 76.)

On the first point, the reference to "[i]ncome" in Section 15307's title is not sufficient to make the statute ambiguous. (See *City of Berkeley v. Cukierman* (1993) 14 Cal.App.4th 1331, 1340 [18 Cal.Rptr.2d 478] (holding that "chapter and section headings cannot be resorted to for the purpose of creating ambiguity when none exists").) Even the *Reynolds* majority acknowledges that "the language of [Section] 15307 seems to allow a money judgment creditor to satisfy its claim from any amount, either income or principal, that is in excess of what the beneficiary needs for his own education and support." (*In re Reynolds, supra*, 479 B.R. at p. 75.) In fact, Section 15307 does more than "seem[] to allow" a creditor to reach surplus income and principal—it does allow it. That should end the inquiry.

In addition, the *Reynolds* majority's claim that adhering to Section 15307's plain meaning somehow creates a conflict with Section 15306.5 that would lead to absurd results is simply wrong. In fact, these two Sections were intended to address entirely different issues and they logically complement each other.

Section 15306.5 is comparable to "the wage garnishment withholding standard of Code of Civil Procedure Section 706.050." (18 Cal. Law Revision Com. Rep., *supra*, at pp. 1339-40.) It was enacted to make payments to a beneficiary from a valid spendthrift subject to the same basic rules that apply to wages earned by regular working people. (Compare Prob. Code, § 15306.5 with Code Civ. Proc., § 706.050.) Section 15306.5 generally allows creditors to reach up to 25 percent of the payment due to a spendthrift trust beneficiary, subject to possible reduction if the beneficiary can establish a legitimate need for the funds—just like the wage garnishment law.

As noted by the *Reynolds* dissent, Section 15307 deals with one type of potential abuse of a spendthrift trust—where the trust is not being used to provide for the support and education of the beneficiary but, instead, "to inequitably shield financially independent beneficiaries from the legitimate claims of creditors." (*In re Reynolds, supra*, 479 B.R. at p. 79.) Under these circumstances, Section 15307 allows creditors, in the discretion of the court, to reach more than the 25 percent amount generally available to creditors under Section 15306.5.

Read together, these Sections generally permit creditors to reach 25 percent of any payments due to a beneficiary from a spendthrift trust, while allowing "either a creditor or the beneficiary to petition the ... court and to perhaps persuade it, in the exercise of its discretion, to either increase or decrease the amount going to the creditor depending upon the beneficiary's financial needs." (*In re Reynolds, supra*, 479 B.R. at pp. 78-79.) This makes complete sense. There is nothing remotely inconsistent—let alone conflicting—about Sections 15306.5 and 15307.

Even worse, the *Reynolds* majority's judicial rewrite of Section 15307 does not actually resolve the purported "conflict" between Sections 15306.5 and 15307. Instead, the *Reynolds* majority skirted the issue under the narrow facts of this case by interpreting Section 15307 to apply to solely income. (*In re Reynolds, supra*, 479 B.R. at p. 77.) Even under the *Reynolds* majority's interpretation of Section 15307, however, the purported "conflict" between that Section and Section 15306.5 still exists with respect to income distributions from a spendthrift trust, which is the far more common situation. Despite the *Reynolds* majority's efforts, creditors would still be able to reach potentially all of the beneficiary's income from a spendthrift trust despite the 25 percent cap in Section 15306.5, the exact outcome

the *Reynolds* majority decried as "absurd" and used as its justification to rewrite Section 15307.¹

Finally, it is worth noting that the issue with respect to Section 15307 is not how to construe vague or imprecise statutory language that is potentially subject to multiple interpretations. The language of Section 15307 is very clear. In order to make Section 15307 consistent with the *Reynolds* majority's opinion, it would have to be rewritten as follows:

Notwithstanding a restraint on transfer of a beneficiary's interest in ~~the trust income~~ under Section 15300 ~~or 15301~~, any ~~amount~~ income to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined to pay to the beneficiary in excess of the amount that is or will be necessary for the education and support of the beneficiary may be applied to the satisfaction of a money judgment against the beneficiary. Upon the judgment creditor's petition under Section 709.010 of the Code of Civil Procedure, the court may make an order directing the trustee to satisfy all or part of the judgment out of the beneficiary's interest in ~~the trust~~ payment of income

¹ The *Reynolds* majority's analysis regarding Section 15307's legislative history and the impact of former Civil Code Section 859 is addressed on pages 21-22 of the Opening Brief filed with the Ninth Circuit by the prior bankruptcy trustee, Sandra Bendon, and on pages 6-9 of the Reply Brief filed with the Ninth Circuit by Frealy. In the interest of brevity and because these issues are irrelevant given the plain language of Section 15307, Frealy will not repeat them here.

that otherwise would be made to, or for the benefit of, the beneficiary.

(Prob. Code, § 15307 (marked to show changes necessary under the *Reynolds* majority's interpretation).) Nothing in the *Reynolds* majority's analysis remotely justifies this type of wholesale rewrite of the statute. (See *California Teachers Ass'n v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 633 [59 Cal.Rptr.2d 671, 927 P.2d 1175] ("This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed.") (internal quotations omitted).)

The Legislature knows how to limit a provision in the Probate Code to "income." It did so very clearly in Section 15300 ("a beneficiary's interest in income") and just as clearly did not in Section 15307 ("a beneficiary's interest in the trust"). (Compare Prob. Code, § 15300 with Prob. Code, § 15307.) This Court should interpret Section 15307 consistent with its plain, unambiguous language and find that it applies to both income and principal distributions.

CONCLUSION

In a last ditch effort to sway the Court, Carmack resorts to misrepresenting Frealy's position. Carmack claims that, "[u]nder Petitioner's reasoning, any ordinary creditor would have the unlimited right to enforce a judgment against any income or principal payments upon becoming due and payable to a judgment debtor beneficiary,"

and that "[t]his would effectively eliminate the concept of spendthrift trust protection California has recognized since 1872." (AB at p. 10.)

Despite Carmack's rhetoric, these claims are simply not true. Frealy has always been careful to distinguish between principal distributions (which are not protected under Section 15301, subdivision (b)) and the trust corpus and income distributions (which are protected by a valid spendthrift clause in the trust instrument at least up to 75 percent, unless one of the specific exceptions applies). As noted by the *Reynolds* dissent, allowing trustors to provide needed financial support to beneficiaries through spendthrift trusts is an "obviously valid legislative goal." (*In re Reynolds, supra*, 479 B.R. at p. 78.) At the same time, "the use of such trusts could prove abusive where beneficiaries with unpaid creditors have no legitimate need for trust distributions." (*Ibid.*) Probate Code Sections 15301, subdivision (b), and 15304-15307 were simply intended to place reasonable limits on spendthrift trusts to ensure that they are not abused. This is not the same thing as "eliminating the concept of spendthrift protection."

For these reasons, Frealy respectfully requests that this Court rule as follows: (1) the 25 percent limitation in Probate Code Section 15306.5 applies solely to that Section, and does not limit creditors' rights under other Probate Code Sections; (2) the phrase "due and payable" in Probate Code Section 15301, subdivision (b), means that principal distributions are not protected from creditors and may be intercepted by creditors "in the hands of the trustee" before they are sent to the beneficiary; and (3) Probate Code Section 15307

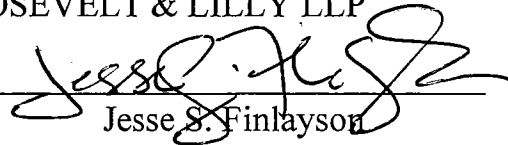
applies to "any amount to which the beneficiary is entitled under the trust instrument," which includes both income and principal.

DATED: August 20, 2015

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT
(Cal. R. Ct. 8.204)

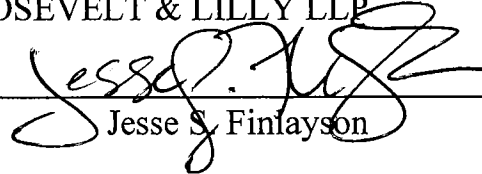
Pursuant to California Rules of Court, rule 8.204, I certify that this reply brief was prepared on a computer using Microsoft Word, and that, according to the program, contains 5,099 words.

DATED: August 20, 2015

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PROOF OF SERVICE

I am over the age of eighteen years and am not a party to the within action. I am employed in the County of Orange, State of California, at the law offices of Finlayson Toffer Roosevelt & Lilly LLP, members of the bar of this Court. My business address is 15615 Alton Parkway, Suite 250, Irvine, CA 92618. On August 20, 2015, I served a true copy / an original of the foregoing document(s) described as:

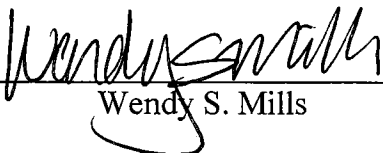
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Frealy v. Reynolds
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