

From: GinA, MTJL <gina@mainetenants.org>
Sent: Monday, August 07, 2017 4:14 PM
To: 'Chief'
Subject: RE: RE: Probate research/writing
Attachments: proposed-legal-argument.docx

Hello Ed.

As promised, I spent some time strategizing the best legal approach to nullify the 2013 Will, doing some quick research and drafting a short brief about my specific legal strategy.

Creating this outline required 3 hours of research, 1 hour of thinking/strategizing and 4 hours of writing the attached document, totaling 10 hours to date.

Attached is a 6-page Microsoft Word document (created on a Windows computer) outlining my proposed legal argument including relevant legal issues, outstanding critical questions, my proposed legal focus and some caselaw citations to support the motion.

Once/If you are able to provide me with 1 or 2 recent relevant cases about a beneficiary attempting to probate a fraudulent will, I will be able to quickly obtain supporting caselaw to draft and complete the motion and memorandum.

I can do that research myself from the beginning but it will take significantly longer than if you were able to provide 1 or 2 cases from which I can begin.

I look forward to hearing your legal opinion about the attached document and if you want to proceed accordingly or if you have a different legal strategy in mind.

Thank you for contacting me and for giving me an opportunity to work with you on this case.

GinA

From: Chief [mailto:americanlaw@usa.com]
Sent: Sunday, August 06, 2017 7:51 PM
To: GinA, MTJL
Subject: Re: RE: Probate research/writing

Thank you GinA for your candor and your thoughts about this matter. I, not only understand and appreciate the value that bring to this very early relationship in doing the legal work, and I agreed to pay you \$500 for your time for a possibly an impresssive overall legal scrutinization of the related P & As as well as formatting the initial draft for the filing with the Court Clerk the motion. Reason for my last email was that Cindy, the paralegal who has already started working on this case, wanted her to finish the entire research, formatting the legal argument and related work. I agreed that she will finish her work regardless of your doing the same without any bearing on her work. i will be in better position to discuss with you some of the pertinent issues on hand that Cindy has addressed or has not. I'll share her work with you for possible further calibration of the technicalities for the attorney to argue on the basis of what you or Cindy has put together. I have already paid you through Paypal only for a brief on this matter without going in great length. Once we fully agree the approach and how to

formulate the entire Motion, then I will go ahead and pay you the balance in order for you to complete your side of the work. Does it make sense?

Regards,
Ed

Sent: Sunday, August 06, 2017 at 12:59 PM
From: "GinA, MTJL" <gina@mainetenants.org>
To: 'Chief' <americanlaw@usa.com>
Subject: RE: Probate research/writing

Thank you for your message. I have read it carefully several times to correctly understand what you are saying.

You appear to agree with my personal legal opinion and strategy to challenge the validity of the new will and the daughter's conservatorship as a fraud *ab initio*.

It seems you are asking me to formulate the entire legal strategy, provide the research, write the petition/motion and memorandum of points and authorities because of your need to work on your international tobacco case.

Last night we agreed on a price of \$500 for my research/writing assistance with this case although we both know the work I will do is much more valuable than \$500.

I am very excited to work with you on this and other projects regardless of the money I may earn, but I do not want to undervalue my skills and services or be taken advantage of because of my generosity and my love for law and justice.

Upon receipt of your payment as mentioned in your message below, I will spend up to 2 hours thinking about the legal strategy I would employ, do some quick legal research to support my argument and will write you a brief summary of my legal strategy with supporting caselaw to nullify the conservatorship and fraudulent will.

Once you decide if my legal approach is the same approach you want to take, it will be important for us to renegotiate my compensation if you are asking me to provide the legal strategy, write the pleadings and do the research to support the legal arguments.

I appreciate your confidence in my abilities, but I also appreciate what my skills are worth.

I appreciate your understanding my position and look forward to working with you.

GinA

From: Chief [mailto:americanlaw@usa.com]
Sent: Sunday, August 06, 2017 3:24 PM
To: GinA, MTJL
Subject: Re: Probate research/writing

Hi GinA,

Sorry for the delay in getting back with you. Last night's meeting with Cindy took longer than I wanted. Any way, after a lengthy discussion about the case, I'm more inclined to figure out what will be your approach to handle the Motion/Petition for this particular case. I will go ahead and pay you for two hours just to get some sense of direction and specific strategy that you may devise in order to get the probate code section 2580 violation enforced resulting in vacating the invalid Will that the conservator daughter made. I will wait to get a very specific judicial approach to this matter before we embark on a lengthy research and subsequent preparation of the Motion. There are two more issues not related to this matter that I will refer them to you, based on my sense of confidence on your abilities and your legal insight that you may apply with simpler logic to focus on the key issues of the problems.

Regards,

Ed

Sent: Saturday, August 05, 2017 at 4:23 PM
From: "GinA, MTJL" <gina@mainetenants.org>

To: americanlaw@usa.com
Subject: Probate research/writing

Hello Ed.

It was very nice speaking with you this evening.

I sent you a contact request from my business skype account “maine.tenants” so we can communicate more easily than through email.

I forgot to mention that I have 3 years completed toward my Bachelor’s Degree in Mental Health & Human Services from the University of Maine at Augusta, most classes I have left are general education courses.

I now work from home because of deterioration of my spine and my not being able to sit or stand for long periods of time which restricts my ability to work at a “real job” in community. I do have a part-time job at a local convenience store which only requires 15 hours/week of my time and is limited to 3a-8a because I open their store twice a week and fill in where needed for my third shift.

I have an unusual sleep schedule and am usually awake at night because that is when I am able to best focus on my legal work and speak with a friend who brainstorms with me on my legal cases. I typically take a “nap” from 5p-10p daily so if you are unable to reach me for any reason, I am probably sleeping.

You can always leave me a chat on skype and I will respond when I am awake again. When I’m involved in my legal work, sleep is never a priority ... ;)

You are more than welcome to give my name and information to any colleagues who may need some assistance. I am always looking for interesting legal cases to work on.

I look forward to working with you on this and perhaps other cases.

GinA

From: Ed Silvercloud [mailto:edex@usa.com]
Sent: Tuesday, August 01, 2017 1:26 AM
To: GinA, MTJL
Subject: Re: RE: ebay from taxliensales

Hello GinA,

Thank you for your response. As far as my research about this type of cases are concerned I did that month ago and I spent over an hour to find the case histories of similar codes. But in order for me to do it again, I have to go back to the law library and do the same research. this is why I am looking for someone who is good in doing legal research for Points and Authorities. If you can do it or have someone assisting you do it would be of great help to me as I am undergoing some medical issues and that doesn't give me enough time to do almost any thing.

Please let me know if you have the resources to find P & As so we can move forward.

Thanks

Ed

Sent: Monday, July 31, 2017 at 9:07 PM
From: "GinA, MTJL" <gina@mainetenants.org>
To: "Ed Silvercloud" <edex@usa.com>
Subject: RE: ebay from taxliensales

Hi Ed. Thank you for providing a very descriptive outline of this case.

You said you "found several cases strictly based on the above probate court that rendered any such financial and legal documents illegal".

It would be very helpful to have the names of those cases to begin our research so we know exactly what you are seeking for legal precedents.

We can definitely help you draft the Motion and Memorandum of Points and Authorities and find relevant caselaw to support your legal arguments.

To show you a sample of my work, you can visit my Scribd page
<https://www.scribd.com/user/30305302/GinA> .

Please understand that I am not an attorney so I cannot and will not provide any legal advice. I do, however, have more than 25 years' experience as a legal secretary and administrative/legal assistant for private lawyers and state government agencies.

I am comfortable working with confidential information and affirm that all confidential information provided to me during this project will never be sold, shared, or disseminated to any individual or published in any public or private forum without your express written permission.

Once you send us the case names for the relevant precedents on point for this case, we will begin our research.

Thank you for requesting our services. We are excited to help you win this case!

GinA

Maine Tenants Research Team

From: Ed Silvercloud [mailto:edex@usa.com]
Sent: Monday, July 31, 2017 10:42 PM
To: gina@mainetenants.org
Subject: Ref: ebay from taxliensales

Hi Gina,

The case I need help with is about a probate Motion. According to California Probate code section 2580, Article 10, requires that a named conservator of an estate (not on person) must file a Petition to the Probate court to authorize the conservator to obtain a "Substituted judgment" authority in order to modify, alter, or create a new Will. This case is directly related to this code violation.

A mother conservatee (now Decedent), made a Will in Los Angeles years before becoming a conservatee of her daughter who was assigned by the court as the conservator of the mother. Mother and daughter have not been on speaking terms since last 15 years or so. Mother lived in Pasadena California while the daughter lives in Boston. After mother's unsuccessful attempt to regain her control and to vacate the conservatorship through the court, she decided to go back to India to live with her family who took care of her. She was alone in her big house with no one to look after her. In mother's absence from the house, daughter visits mother's vacant house by breaking the locks, finds a copy of the Last Will that the mother made in 2008. Daughter, conservator, upon finding out that her mother has disowned her from her Will, flies to India and compels the mother to create a new Will where daughter names herself as the exclusive beneficiary of a 3 million plus dollars estate of the mother. She flies back and files for the probate based on this newly created Will despite the fact a valid California notarized Will of 2008 existed.

By law court required the daughter (conservator) to send notices to all the siblings of the decedent. That's when I found out and the family in India asked me to submit the old Will in contest, which I did. Named Executor of the Will of 2008 is the elder sister of the Decedent in India. Daughter became the conservator of the mother in 2011, 3 years before her conservatorship was established by the court.

I have done some research at the Ventura County Law Library and found several cases strictly based on the above probate court that rendered any such financial and legal documents illegal if obtained by the conservator on self interest basis.

What I am trying to do is to file a Motion in the Probate court based on the above Probate codes with strong Memorandum of Points and Authorities to compel the court to render the last Will of the Conservator invalid in violation of the State of California Probate Court laws.

Can you help me draft the Motion? If not, can you put together a strong and powerful list of Points and Authorities in support of my Motion?

If you can do either of the above I will go ahead and pay you not for two but 4 hours of your time instead.

Thanks

Ed

(805) 217-2419

Conservatorship/Estate of Reyes

September 16th Hearing ~ To Contest Validity of 2013 Last Will

Daughter's creation of a fake 2013 Will is a distinctly separate issue from her gaining conservatorship through fraud. Daughter's fraudulent Will is evidenced by the signature and contrary details of the Estate's financial disbursements.

Medical and testimonial evidence must be provided to prove mother received a "clean bill of health" after her 2010 surgery.

Clear and convincing evidence must be provided to prove undue influence by daughter against mother.

Proposed Legal Focus

There are two distinctive irrefutable arguments for this case:

1. Daughter obtained *temporary* conservatorship by extrinsic, intrinsic and promissory fraud, and
2. Daughter/beneficiary is attempting to probate a fake multi-million dollar security instrument (2013 Will) for her sole personal financial benefit.

Relevant Legal Issues

There are a few separate legal issues that can be argued, separately if necessary:

1. Allegations of elder physical abuse when daughter "forcibly ejects" mother from her home in India and placed mother against her will into a nursing home.
2. Daughter applied duress and undue pressure to force mother to sign a fraudulent Will in 2013.
3. Extreme distress and nursing home neglect/abuse may have led to mother's accelerated death.
4. Allegations of elder financial abuse by daughter/beneficiary by drafting a fake Last Will in 2013 to defraud the estate and the court.
5. Criminal falsifying of a multi-million dollar security instrument in 2013 (Last Will worth \$4M +/-) by daughter/ beneficiary's use of physical force to gain sole control of mother's estate.
6. Opening a public probate case with a fake security instrument for the purpose of defrauding the estate and the court for the sole personal financial benefit of the daughter/beneficiary.
7. *Temporary* conservatorship ordered by court based on extrinsic, intrinsic and promissory fraud by daughter/petitioner/conservator beginning in 2010.
8. The Court did not have full disclosure about all required elements when appointing a proper conservator.

Proposed Legal Argument

Regardless of the conservator's temporary legal power in 2010 to control the conservatee's estate for **30-60 days** under strict scrutiny of the court, the conservator/daughter/beneficiary never had a legal right to 1) create a Last Will of the conservatee in 2013, 2) apply duress to force conservatee to sign a new Last Will (or falsify conservatee's signature), and 3) submit a fake Last Will to Probate Court for administration as a legitimate Last Will in clear deviation from conservatee's 2008 valid Last Will and Addendum, "Disowning My Daughter" which expressly disowned daughter from inheriting under mother's estate.

California Probate Code requires a conservator to always request and receive permission and supervision by the court and a Court Investigator when engaging in any fiduciary action on conservatee's behalf; a Court, however, after hearing all relevant background information about conservator's negative relationship with decedent, would

not authorize drafting or executing a fake Will that reversed a valid Last Will that was created when a conservatee was of sound mind and with good judgment.

The law does not allow the drafting of a Last Will by anyone other than a grantor/decedent.

Comparing the date of the fake Will to the date of the conservatee's incapacity, supported by medical records and witness testimony, the Court will have no choice but to invalidate the fake 2013 Will and reverse or remediate all actions conservator/daughter may have taken on behalf of conservatee due to extrinsic, intrinsic and promissory fraud.

1. Court was not fully informed of the negative relationship between conservator/conservatee.
2. Court was not fully informed of mother's wishes to disown daughter or about their 18-year-estrangement at the time daughter petitioned court and temporary conservatorship was ordered.
3. Court was not fully informed of conservatee's medical "clean bill of health" after the brain surgery before or after the conservatorship was ordered.
4. Court ordered "temporary conservatorship"¹ to conservatee/daughter who withheld critical facts to gain the conservatorship.
5. Daughter committed intrinsic fraud² against the court in order to commit extrinsic fraud³ against the estate.
6. Daughter committed promissory fraud⁴ against the court and the mother when daughter claimed to have mother's best interests at heart and would responsibly administer mother's personal affairs and financial estate to gain undue power under a fraudulent petition for conservatorship.

Some Outstanding Questions

7. What was the start and end date of conservator's temporary conservatorship?
8. When did the temporary conservatorship end, if it ended at all?
9. Was a Court Investigator⁵ assigned to gather neutral information for this case?
10. Did the Court Investigator gather neutral information about the proposed conservatorship?
11. Did the Court Investigator speak with the conservator/conservatee at any time?
12. Did the Court Investigator speak with conservatee's doctors or sister at any time?
13. Did the Court Investigator provide the court with all required neutral information?

¹ Temporary conservatorships have a specific end date. A temporary conservator is usually appointed for a fixed time period, usually 30 to 60 days. These conservatorships can be of the person, of the estate, or both. The main role of the temporary conservator is to ensure the temporary care, protection, and support of the conservatee. And the temporary conservator of the estate protects the conservatee's finances and property from any loss or damage until a general conservator can take over the management of the estate.

A temporary conservator cannot, without the judge's prior approval:

Move the conservatee from his or her home (unless it is an emergency) ;
Sell the conservatee's home, or, if the conservatee is a renter, give up the lease; or
Sell or give away an estate asset.

To ask for the appointment of a temporary conservator, the request must be made as part of a general conservatorship court case.

<http://www.courts.ca.gov/selfhelp-conservatorship.htm>

² Intrinsic fraud. Blacks Law 9th, Deception that pertains to an issue involved in an original action. Examples include the use of fabricated evidence, a false return of service, perjured testimony, and false receipts or other commercial documents.

³ extrinsic fraud. Blacks Law 9th, 1. Deception that is collateral to the issues being considered in the case; intentional misrepresentation or deceptive behavior outside the transaction itself (whether a contract or a lawsuit), depriving one party of informed consent or full participation. 2. Deception that prevents a person from knowing about or asserting certain rights.

⁴ promissory fraud. Blacks Law 9th, A promise to perform made when the promisor had no intention of performing the promise.

⁵ Once a conservator is appointed, the court investigator stays involved. Six months after the appointment, the investigator will review the case to make sure the conservator is fulfilling his or her responsibilities as conservator and that the conservatee's rights are being upheld. The investigator will review the case again in another 6 months and at the end of each 12-month period after that.

<http://www.courts.ca.gov/selfhelp-conservatorship.htm>

14. What happened between conservator/conservatee from 2010 – 2013? Conservatorship was only temporary for 30-60 days beginning in 2010.
15. Did the daughter still have legal authority as her mother's conservator in 2013 when she went to India?
16. Was the daughter acting as a conservator or a beneficiary in 2013 when she forced her mother to sign a fake Will?
17. Were there any unbiased witnesses present at the time the mother signed the fake Will in 2013?
18. Did the daughter/conservator report any of her fiduciary actions to the court as required by the code?
19. Has the daughter taken a proper inventory of mother's financial accounts and personal assets/possessions?
20. Has the daughter disposed of, transferred or sold any of the mother's assets?
21. Has the daughter redeemed any of the mother's insurance policies, stocks, bonds or other security accounts?
22. How has the daughter spent any monies she received while acting as the conservator of the mother's estate?
23. Did the daughter properly fulfill her legal duties as a conservator under the code to the report to the court?

Some Relevant Case Law/Citations

Estate of Mann, 184 Cal. App. 3d 593 - Cal: Court of Appeal, 1st Appellate Dist., 2nd Div. 1986

https://scholar.google.com/scholar_case?case=2468382182249071130&q=decedent+conservator+estate+fraud&hl=en&as_sdt=4,5,60,72,73,78,79,80,86,88,93,114,129,134,135,141,142,143,149,151,156,258,259,260,261,310,311,321,322,323,324,373,374,383

"[T]he determinants of testamentary capacity are whether the individual 'has sufficient mental capacity to be able to understand the nature of the act he is doing, and to understand and recollect the nature and situation of his property and to remember, and understand his relations to, the persons who have claims upon his bounty and whose interests are affected by the provisions of the instrument.'" (*Estate of Fritschi (1963) 60 Cal.2d 367, 372 [33 Cal. Rptr. 264, 384 P.2d 656]*, quoting *Estate of Smith (1926) 200 Cal. 152, 158 [252 P. 325]*; see Prob. Code, § 6100.5.) (2) Testamentary capacity must be determined at the time of execution of the will. (*Fritschi, supra, at p. 372*.) Incompetency on a given day may, however, be established by proof of incompetency at prior and subsequent times. (*Estate of Fosselman (1957) 48 Cal.2d 179, 185 [308 P.2d 336]*.) Where testamentary incompetence is caused by senile dementia at one point in time, there is a strong inference, if not a legal presumption, that the incompetence continues at other times, because the mental disorder is a continuous one which becomes progressively worse. (*Estate of Fosselman, supra, 48 Cal.2d 179, 186*.)

(3) The burden is on the contestant to overcome the presumption that a testator is sane and competent. (*Fritschi, supra, 60 Cal.2d at p. 372*.) (4) On appeal, however, "[t]he rules of evidence, the weight to be accorded to the evidence, and the province of a reviewing court, are the same in a will contest as in any other civil case...."

(7a) It is well established that "old age or forgetfulness, eccentricities or mental feebleness or confusion at various times of a party making a will are not enough in themselves to warrant a holding that the testator lacked testamentary capacity." (*Estate of Wynne (1966) 239 Cal. App.2d 369, 374 [48 Cal. Rptr. 656]*, citing *Estate of Sanderson (1959) 171 Cal. App.2d 651, 660 [341 P.2d 358]* and *Estate of Lingensfelter (1952) 38 Cal.2d 571, 581 [241 P.2d 990]*.) "It has been held over and over in this state that old age, feebleness, forgetfulness, filthy personal habits, personal eccentricities, failure to recognize old friends or relatives, physical disability, absentmindedness and mental confusion do not furnish grounds for holding that a testator lacked testamentary capacity." (*Estate of Selb (1948) 84 Cal. App.2d 46, 49 [190 P.2d 277]*.) (8a) Nor does the mere fact that the testator is under a guardianship support a finding of lack of testamentary capacity without evidence that the incompetence continues at the time of the will's execution. (*Estate of Nelson (1964) 227 Cal. App.2d 42 [38 Cal. Rptr. 459]*; *Estate of Wochos (1972) 23 Cal. App.3d 47 [99 Cal. Rptr. 782]*.)

(9) It must be remembered, in this connection, that "[w]hen one has a mental disorder in which there are lucid periods, it is presumed that his will has been made during a time of lucidity." (*Estate of Goetz (1967) 253 Cal. App.2d 107, 114 [61 Cal. Rptr. 181]*.) (6b) Dr. Lee

testified that decedent's mental state fluctuated and that the conservatorship was established to protect her from the "worst times." Vonne Adcock testified that even in late 1977 decedent had periods of alertness, as John Finn, decedent's tax accountant, also testified. Thus a finding of lack of testamentary capacity can be supported only if the presumption of execution during a lucid period is overcome...

The only evidence suggestive of decedent's incapacity at the time the will was executed is in fact evidence of her condition at other times. That is, the only bases for the conclusion she lacked capacity at the time of execution would be inferences that the factors leading to the conservatorship rendered her incapable of comprehending the extent of her property and continued to so affect her at the time of the will's execution, and that her senility caused faulty recollection at this time.

There are several problems in the indulging of such inferences. (8b) First, the fact that a testator has been placed under a guardianship does not 605*605 in itself establish testamentary incapacity. ([Estate of Nelson, supra, 227 Cal. App.2d 42, 55-56](#); see also, Note, Effect of Adjudication of Mental Incompetency on Power to Make a Will (1943) 16 So.Cal.L.Rev. 355.) Since a conservatorship, unlike a guardianship, does not involve a declaration of incompetence ([Estate of Wochos, supra, 23 Cal. App.3d 47, 54](#)), a conservatorship raises an even weaker inference of testamentary incapacity.^[3]

Second, the inference of incapacity which arises from an adjudication of incompetence in a guardianship proceeding is only of incapacity as of the time of the finding ([Estate of Nelson, supra, 227 Cal. App.2d at p. 55](#)), and evidence must be produced to show that the condition continues at the time of a subsequent will execution. (*Ibid.*) If the inference arising from a guardianship cannot be presumed to continue, no such presumption can arise from a conservatorship. (6d) Moreover, not only was there no evidence that decedent's mental or physical condition declined between the time of the conservatorship proceedings and execution of the will, but there was evidence that both improved during this period.^[4]

Third, it is not clear that the symptoms which led to the conservatorship necessarily demonstrate incompetence. The express basis of the conservatorship was decedent's inability to manage her person and property. (7b) Inability to transact ordinary business does not establish testamentary incapacity ([Estate of Sanderson, supra, 171 Cal. App.2d 651, 657](#)); nor do "filthy personal habits" or physical disabilities. ([Estate of Selb, supra, 84 Cal. App.2d 46](#).)

11) In order to set aside a will on grounds of undue influence, "[e]vidence must be produced that pressure was brought to bear directly on the testamentary act.... Mere general influence ... is not enough; it must be influence used directly to procure the will and must amount to coercion destroying free agency on the part of the testator." ([Estate of Welch \(1954\) 43 Cal.2d 173, 175 \[272 P.2d 512\]](#), italics in original.) There must be proof of "a pressure which overpowered the mind and bore down the volition of the testator at the very time the will was made." (*Id.*, at p. 176; [Estate of Lingenfelter, supra, 38 Cal.2d 571, 586-587](#).)

(15) While undue influence may be proved by circumstantial evidence ([Estate of Garibaldi, supra, 57 Cal.2d 108, 113](#); [Estate of Ausseresses \(1960\) 178 Cal. App.2d 487, 488-489 \[3 Cal. Rptr. 124\]](#)), proof of circumstances consistent with undue influence is insufficient — the proof must be of circumstances inconsistent with voluntary action. ([Estate of Lombardi \(1954\) 128 Cal. App.2d 606, 612 \[276 P.2d 67\]](#); [Estate of Bould, supra, 135 Cal. App.2d 260, 270](#); [Estate of Wright, supra, 219 Cal. App.2d 164, 171](#).) "[M]ere opportunity to influence the mind of the testator, even coupled with an interest or a motive to do so, is not sufficient." ([Estate of Welch, supra, 43 Cal.2d 173, 175](#); [Estate of Fritschi, supra, 60 Cal.2d 367, 373-374](#).) There must be activity by the beneficiary in the actual preparation of the will. ([Estate of Straisinger \(1967\) 247 Cal. App.2d 574, 586 \[55 Cal. Rptr. 750\]](#).)

(16) "[T]he mere fact of the beneficiary procuring an attorney to prepare the will is not sufficient 'activity' to bring the presumption into play ...; or selection of attorney and accompanying testator to his office ...; or mere presence in the attorney's outer office; ... or presence at the execution of the will ...; or presence during the giving of instructions for the will and at its execution ..." ([Estate of Bould, supra, 135 Cal. App.2d 260, 275-276](#), citations omitted.) (13d)

"... a beneficiary took the testator to his own attorney has been viewed as a circumstance indicating undue influence where the selection of attorney was accomplished by deception ([Estate of Beckley \(1965\) 233 Cal. App.2d 341, 347-348 \[43 Cal. Rptr. 642\]](#)),..."

"`[a] will cannot be overturned on the mere speculation or suspicion that undue influence may have been used to procure it.'" ([Estate of Niquette \(1968\) 264 Cal. App.2d 976, 980 \[71 Cal. Rptr. 83\]](#); [Estate of Welch, supra, 43 Cal.2d 173, 180.](#))

(17) Few principles are more firmly established in the law of probate, however, than the principle that "a will is not to be upset because its provisions may seem to the court or the jury to be unreasonable, unnatural, foolish, or unjust." ([Estate of Higgins \(1909\) 156 Cal. 257, 265 \[104 P. 6\]](#); accord, [Estate of Perkins \(1925\) 195 Cal. 699, 709 \[235 P. 45\]](#); [Estate of Martin \(1915\) 170 Cal. 657 \[155 P. 138\]](#); 663; [Estate of Packer \(1913\) 164 Cal. 525, 528 \[129 P. 778\]](#); [In re Wilson \(1897\) 117 Cal. 262, 277 \[49 P. 172\]](#); [In re Langford \(1895\) 108 Cal. 608, 624 \[41 P. 701\]](#); [In re Spencer \(1892\) 96 Cal. 448, 452 \[31 P. 453\]](#); [In re McDevitt \(1892\) 95 Cal. 17, 33 \[30 P. 101\]](#); [Estate of Greenhill \(1950\) 99 Cal. App.2d 155, 158 \[221 P.2d 310\]](#); [Estate of Alegria \(1948\) 87 Cal. App.2d 645, 655-658 \[197 P.2d 571\]](#); [Estate of Markham \(1941\) 46 Cal. App.2d 307, 314 \[115 P.2d 866\]](#); [Estate of Burns \(1938\) 26 Cal. App.2d 741, 748 \[80 P.2d 77\]](#); [Estate of Nolan \(1938\) 25 Cal. App.2d 738, 740 \[78 P.2d 456\]](#).) In the words of the standard jury instruction currently in use in California, "Every person of sound mind, over the age of 18 years, and not acting under [menace] [duress] [undue influence] [fraud], has the right to make a will directing the disposition of his property upon his death in any way he sees fit. He is under no obligation to make such disposition as will meet with the approval of a judge or jury. ¶ The right to dispose of property by will is a fundamental right assured by law and does not depend upon this right being wisely used. ¶ A will cannot be set aside simply because it may appear to [the jury] to be unreasonable or unjust." (BAJI No. 12.02.)

Conservatorship of Hart, 228 Cal. App. 3d 1244 - Cal: Court of Appeal, 6th Appellate Dist. 1991

https://scholar.google.com/scholar_case?case=12740563496056173437&q=2580+conservatorship&hl=en&scisbd=2&as_sdt=4,5,60,72,73,78,79,80,86,88,93,114,129,134,135,141,142,143,149,151,156,258,259,260,261,310,311,321,322,323,324,373,374,383

The statute [\[2\]](#) permits a conservator to petition for an order authorizing a proposed action for any one or more of several purposes: to benefit the conservatee or the estate; to minimize current or prospective taxes or expenses of conservatorship or probate administration; or to provide gifts for such purposes and to such donees as would be likely beneficiaries of gifts from the conservatee. (Prob. Code, § 2580, subd. (a).) The proposed action may include, among other things, "[m]aking gifts of principal or income, or both, of the estate, outright or in trust." (Id. subd. (b)(1).)

The statute empowers the superior court, "in its discretion" and after a hearing, to "approve, modify and approve, or disapprove the proposed action" and to authorize or direct other action. (Prob. Code, § 2584.) **But before it makes its decision the superior court must** (1) provide for notice to various classes of persons (id. § 2581, subd. (c)), (2) **determine (a) that the conservatee is not opposed to the action**, or if opposed lacks legal capacity for the action, and (b) that the action either will have no adverse effect on the estate or will leave the estate adequate to provide for the conservatee and for the support of those the conservatee is legally obliged to support, taking all circumstances into account (id. § 2582), and (3) "[T]ake into consideration all the relevant circumstances, including but not limited to" specific circumstances enumerated in 11 categories (id. § 2583) recapitulated in a requirement that the court consider "[t]he likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so." (Id. subd. (k).) The Law Revision Commission commented that "[t]he listing in Section 2583 is not exclusive, and the weight to be given to any particular matter listed will depend upon the circumstances of the particular case.... A matter not listed may be significant in a particular case." (Com. on Prob. Code, § 2583, 14 Cal. Law Revision Com. Rep., *supra*, at p. 795.)

It is apparent that the substituted-judgment statute is designed, consistent with the Probate Code's conservatorship provisions as a whole, to protect the conservatorship estate for the benefit not only of the persons who will ultimately receive it from the conservatee or his or her personal representative but also (and perhaps primarily) of the conservatee himself or herself. It is, after all, the conservatee whose property is to be managed, applied, or (as in this case) given away. Common sense tells us that in many cases (as in this one) the conservatee will be incapable of protecting his or her own interests. It will thus be incumbent upon the conservator, upon any other petitioner, and

upon the superior court itself to assure throughout substituted-judgment proceedings that the conservatee's interests are, indeed, protected. Where amounts are large or the stakes otherwise especially high, it may be prudent for the superior court to appoint a guardian ad litem, empowered to retain independent counsel, to protect the conservatee's personal interest.