

Beverly Hills Bar Association – Trusts & Estate Section
October and November 2018 Legal Updates

Orange Catholic Foundation v. Arvizu, 2018 S.O.S. 5058 (filed Oct. 17, 2018)

Josephine Kennedy created the Josephine Kennedy Trust. Upon Josephine's death, her niece, Rosie Arvizu became successor trustee. Rosie was close with Josephine and knew her wishes. After Josephine's death, the trust created a life estate in a residence to Josephine's long-time family friend, Paul Senez. The trust required Paul to pay “ordinary maintenance expenses” on the residence. Paul was elderly and became unable to afford the expenses. Instead of evicting Paul, Rosie used trust funds to pay the expenses because she thought it was the right thing to do and what Josephine would have wanted. After Paul died, it took Rosie two years to sell the residence. The remainder beneficiary, Orange Catholic Foundation, petitioned the court for Rosie’s removal and surcharge based on breach of trust. The trial court denied the petition and excused Rosie’s conduct because it found she acted reasonably and in good faith.

The appellate court affirmed and held that if the court finds a trustee has acted reasonably and in good faith, the court has equitable authority to excuse the trustee in whole or part from liability. Substantial evidence supported the court’s finding that Rosie acted reasonably and in good faith because she felt her use of trust funds to pay the expenses was consistent with her aunt’s wishes. Her two-year delay in selling the residence was neither unreasonable nor in bad faith, given Rose's health issues and the delay resulted a \$136,000 appreciation in the value of the residence. The trust sustained no damage, and Orange Catholic Foundation received a net benefit from the trustee's conduct. Therefore, the trial court did not abuse its discretion in excusing the trustee from liability.

Estate of Fusae Obata, 2018 S.O.S. 4765 (filed Sept. 26, 2018)

Decedent died intestate, unmarried, and leaving no issue. Decedent's father was adopted in Japan under the Japanese practice of 養子縁組 ("yōshi-engumi"). Decedent's father's descendants from his biological parents claimed that under intestate succession the Decedent's father's adoption was not valid under California law. The Court held that the Japanese practice of yōshi-engumi was a valid adoption within the meaning of the Probate Code. The appellate court affirmed holding the status of adoption is determined by the laws of the jurisdiction where the adoption occurred irrespective of whether those laws impose the same requirements as California law.

Kerley v. Weber, 2018 S.O.S. 4930 (filed Oct. 3, 2018).

Marcie Weber was criminally convicted of theft from an elder and was ordered to pay restitution to the victim's estate. The parties stipulated to a restitution judgment of \$700,000. The elder's conservator also filed an 850 and 859 petition to recover damages for the wrongful taking from an elder. The court decided that the results of the criminal trial and Marcie's stipulation to the amount of restitution essentially resolved all the issues for trial and granted the petition and awarded double damages of \$1.4 million. The appellate court found that the trial court appropriately entered judgment based on collateral and judicial estoppel because all of the elements for a taking under Probate Code 850 had been met from the criminal conviction. Further, the criminal conviction also constituted a finding that Marcie had taken property through elder abuse and, therefore, no separate proof of bad faith was needed to warrant double damages.

Barefoot v. Jennings, 2018 S.O.S. 4471 (filed Aug. 14, 2018, publication ordered Sept. 10, 2018)

Settlor's daughter challenged the validity of eight amendments to and restatements of Settlor's Trust, which provided for the daughter's disinheritance and removal as successor trustee of the Trust. Settlor's daughter filed a contest under Probate Code 17200, alleging that the Settlor was not competent at the time she executed the amendments, and that the Settlor executed the amendments as a result of undue influence and fraud. The court dismissed the petition on the ground that the Settlor's daughter lacked standing. The appellate court affirmed and held that only a current beneficiary or trustee of a trust has standing under Probate Code 17200.

Estate of O'Connor, 2018 S.O.S. 4350 (filed Aug. 29, 2018)

Settlors' Trust named their children as remainder beneficiaries. The Trust provided that their son held a power of appointment over his interest in the Trust, and if the power was not exercised, the share would pass to the other Trust beneficiaries. In order to validly exercise the power of appointment, it had to be exercised in "a will specifically referring to and exercising this general testamentary power of appointment." The son died leaving a will, which he stated "I exercise any Power of Appointment which I may have over that portion of the trust or trusts established by my parents for my benefit or any other trusts for which I have Power of Appointment" in favor of my brother. Two other trust beneficiaries contended the exercise of the power of appointment was invalid because it failed to satisfy the trust's specific-reference requirement. The court held and appellate court affirmed that the language in the son's will constituted a valid and effective exercise and met the Trust's specific reference requirement.