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Appellate court expands and clarifies the right of litigants to challenge trusts

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The preferred method of estate planning is the creation of revocable trusts that set forth the settlor's desired dispositive provisions, rather than simple wills that result in the expense and delays of probate. On the death of the settlor, the vast majority of such trusts are administered without Court supervision or challenge, but they are, of course, subject to contest on much the same grounds as traditional wills, including lack of capacity, undue influence, and fraud. When such contests are filed, the contestant needs to establish his or her standing, and the judicial right to pursue the remedy sought. Who enjoys such standing in trust disputes has been the subject of some confusion in the last few years, settled in part by the 2020 decision of the California Supreme Court in *Barefoot v. Jennings* (2020) 8 Cal.5th 822. That decision has now been validated and broadened in the recent case of *Hamlin v. Jendayi* (Alameda County Superior Ct No. RP20061734 - filed October 17, 2023).

In *Hamlin*, two intestate heirs of decedent Laura Dean Head, a 64-year-old professor at San Francisco State University, challenged a Trust she signed in the hospital two weeks before her death. Those heirs, her sisters, Della Hamlin and Helaine Head, alleged that the Trust was the product of the undue influence of Zakiya Jendayi (a friend and former academic mentee of Professor Head) and signed at a time when they contend she lacked testamentary capacity. That Trust left the assets of Professor Head to Jendayi and specifically disinherited both sisters.

Though the trial court initially signaled concern regarding Della and Helaine's standing under Probate Code section 17200, it allowed the case to continue when the sisters clarified they were relying on legal theories such as financial elder abuse and invalidation. The court ultimately found for Helaine and Della, concluding that Jendayi had "failed to meet her burden of proof by a preponderance of the evidence that the Trust was not the product of undue influence." (*Hamlin* at p. 9.)

The opinion of the Court spends considerable time and space on the facts underlying the arguments of the parties for and against the claims of lack of capacity and undue influence. Those included welfare checks on Professor Head which found her emaciated, unable to walk or communicate intelligently, in an uninhabitable house with possums living in it, packed floor to ceiling with hoarded items. Jendayi took over her care, moved her to her own apartment, obtained a power of attorney, conveyed Professor Head's auto to herself, added herself to Professor Head's bank account, and contacted an attorney to draft an estate plan for Professor Head, all in the space of two weeks. In response to the drafting attorney's questions regarding relatives, Jendayi answered, "None." When the trust was signed in the hospital two weeks before Professor Head's death, it was the first time the attorney had spoken with her. By contrast, Jendayi presented evidence to show that she enjoyed a long and impliedly romantic relationship with Professor Head.

While disputing the substantive allegations brought by the sisters, Jendayi raised their lack of standing to challenge the Trust based on California Probate Code § 17200 (a), which provides in pertinent part as follows:

"...[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...." Prob. Code § 17200 (emphasis added.)

Because neither sister was a trustee or a beneficiary of the Trust, Jendayi argued that they were not entitled to the protection of §17200 and their contest must be dismissed.

Under well understood California precedent, standing to sue requires that party to an action have a beneficial interest in the controversy. *Arman v Bank of America* (1999) 74 Cal.App.4th 697. What satisfies standing is "a fluid concept dependent on the nature of proceeding... and the parties' relationship to the proceeding, as well as to the trust (or estate." *Arman, supra* at 702-703.

The Probate Code defines "interested party" broadly as "[a]n heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding." Probate Code §48(a).

Whether that expansive definition was applicable in trust contests or was confined only to beneficiaries and trustees by the language of Probate Code §17200 (a), was the subject of the Supreme Court's decision in *Barefoot v. Jennings*. In *Barefoot*, Joan Lee Maynord and her deceased husband established a revocable trust in 1986. After her husband's death in 1993, Maynord executed a series of trust amendments excluding one of her daughters who had previously been named a beneficiary. That daughter sought to set aside that trust amendment on the grounds of lack of capacity, fraud and undue influence. The respondents, other daughters of the deceased, objected to standing on the basis that the excluded daughter was no longer a beneficiary of the Trust and, thus, not within the class of permitted contestants, trustees and beneficiaries, permitted by Probate Code §17200. The trial court agreed with the respondents and the appellant court affirmed.

In rejecting the appellate court argument, the Supreme Court in *Barefoot* held that once a beneficiary, always a beneficiary for purposes of standing, and recognized the Probate Court's inherent power to decide all incidental issues necessary to carry out its expressed powers to supervise the administration of the Trust, citing *Estate of Heggstad* (1993) 16 Cal.App.4th 943. The *Barefoot* Court stated:

"To hold other than we do today would be to insulate those persons who improperly manipulate a trust settlor to benefit themselves against a probate petition."

The *Barefoot* decision expressly left open the question whether "an heir who was never a trust beneficiary has standing under the Probate Code to challenge that trust." *Barefoot* at p. 825, fn. 2.) In other words, the exact question posed by the facts in *Hamlin*. Prior to the trust engineered by Jendayi, Professor Head had been intestate, unmarried and childless, and the sisters were instead her intestate heirs. The opinion made short work of this difference. "As intestate heirs of Dr. Head," the court opined, "respondents had an actual and concrete interest in Dr. Head's estate and in invalidating the Trust that purported to disinherit them." The opinion cited to *Olson v. Toy* (1996) 46 Cal.App.4th 818, which held that an heir had standing to bring a civil action for declaratory relief and imposition of a constructive trust in challenging an inter vivos trust on similar grounds.

In reaching its decision, the Court reasoned that the permissive word "may" in § 17200 is "hardly an indication of a legislative intent to circumscribe" standing in trust contents to only trustees and beneficiaries. Instead, the *Hamlin* court noted that limiting standing under § 17200 to beneficiaries and trustees would cramp application of other provisions of the Probate Code. Section 16061.7, for example, requires that on the death of a settlor, the successor trustee must give written notice to all beneficiaries and intestate heirs of their right to contest a trust and sets in motion a 120-day statute of limitations to file such a petition. If Jendayi's construction were adopted, § 17200 would bar standing to the very persons required to receive notice of their right to contest the trust, rendering portions of §16061.7 superfluous. "This is a construction we must avoid," the Court concluded.

The slow wending of the course of *Barefoot* through the Courts on its way to the 2020 opinion of the Supreme Court caused consternation in the practice of estate and trust lawyers. For a concept as foundational to dispute resolution as standing, clarity was much needed for practitioners deciding whether, and on what theories, to bring claims. Most agreed that the expansive construction in the *Barefoot* decision, which harmonized otherwise in compatible legislative priorities, was correct. Most will similarly welcome the broadened definition of standing set forth in *Hamlin*.

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