

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Lintz v Lintz 1/14/14

Financial Elder Abuse; Testamentary Capacity; Undue Influence

Defendant was the third wife of decedent Robert Lintz. They married in 1999, divorced after 6 months, and were then remarried in 2005. Their second marriage ended in October 2009 when decedent was 81. Defendant has two children from a previous marriage. Decedent had three children from two previous marriages. When decedent remarried defendant in 2005 he was a retired real estate developer worth millions of dollars. Decedent's estate plan was contained in the Robert Lintz Trust, and had been amended many times over the years. The ninth amendment to the trust, in effect when decedent and defendant remarried, provided for his children, grandchildren and a former son-in-law upon his death.

In May 2005, decedent executed a tenth amendment to the trust, providing defendant with fifty percent of decedent's assets upon his death, with the remaining fifty percent distributed among his children and grandchildren. Between 2005 and 2008, decedent executed several additional trust amendments, increasingly providing defendant with more of his assets upon his death and disinheriting his two eldest children. In 2008, decedent and defendant jointly executed the Robert Lintz Family Revocable Trust, prepared by defendant's attorney at defendant's direction, which designated all of decedent's property as community property, gave defendant an exclusive life interest in decedent's estate, and gave defendant the right to disinherit decedent's youngest child and leave any unspent residue to defendant's two children.

Upon decedent's death, his two oldest children, plaintiffs Susan Lintz and James Lintz, as decedent's successors in interest, filed a complaint against

defendant, (1) alleging fiduciary abuse of an elder, (2) breach of fiduciary duty, (3) conversion, (4) constructive trust, and (5) undue influence. Following a 15 day bench trial, the probate court issued a 25 page statement of decision finding defendant liable for financial elder abuse under **Welfare and Institutions Code section 15610.30**, breach of fiduciary duty, conversion of separate property funds, and finding defendant in constructive trust of decedent's converted funds and trust property. The court ruled that decedent had testamentary capacity to execute the instruments, but it found defendant liable for undue influence in the procurement of decedent's estate plans.

The probate court voided all trusts and trust amendments following the tenth amendment to the trust, invalidated real property deeds, and took steps to implement the tenth amendment terms. The court concluded that much of defendant's spending during the marriage constituted acts of financial elder abuse and conversion, and awarded plaintiffs attorney fees and costs for proving financial elder abuse under **section 15610.30**. Defendant appealed the judgment, solely on remedial grounds, arguing the court erred by voiding the testamentary documents and amendments, and interfered with the marital relationship.

The Sixth District Court of Appeal began its opinion by reciting the pertinent law found in **Probate Code sections 810, 811 and 812**. There is a rebuttable presumption that all persons have the capacity to make decisions and to be responsible for their acts or decisions, recognizing that persons with mental or physical disorders may still be capable of executing wills or trusts and performing other actions. **(Section 810)** A person lacks capacity when there is a deficit in at least one identified mental function and a correlation exists between the deficit and the decision or act in question. **(Section 811)** A person lacks the capacity to make a decision unless the person has the ability to communicate a decision and to understand and appreciate the rights, duties and responsibilities created by the decision, the probable consequences of the decision, the persons affected by the decision, and the risks, benefits, and reasonable alternatives involved in the decision. **(Section 812)**

Here, the probate court applied a lower mental standard, **Probate Code section 6100.5**, requiring only that the person understand the nature of the testamentary act, the nature of the property at issue, and his relationship to those

affected by the will. The measure by which a court should evaluate a decedent's capacity to make an after-death transfer by trust distinguishes between the mental capacity to make a will versus a testamentary transfer in general. **Section 6100.5** applies to making a will, but not general testamentary transfers, such as a trust. Because **sections 810-812** provide that capacity be evaluated in light of the complexity of the decision or act in question, capacity to execute a trust must be evaluated by a person's ability to appreciate the consequences of the particular act he or she wishes to take. More complicated decisions and transactions thus would appear to require greater mental function. (*Anderson v Hunt* (2011) 196 Cal.App.4th 722)

Because the trust amendments at issue in this case were unquestionably more complex than a will or codicil, and addressed community property concerns, **section 6100.5** did not apply and the probate court erred by using that section. The amendments provided for income distribution during the life of the surviving spouse, provided for the creation of multiple trusts, and contemplated tax consequences, such that **sections 810-812** were appropriate to the analysis of capacity.

Family Code section 721(b) imposes a duty of highest good faith and fair dealing on each spouse, prohibiting each spouse from taking unfair advantage of the other. Thus, if one spouse secures an advantage from the transaction, a statutory presumption arises under **section 721** that the advantaged spouse exercised undue influence and the transaction will be set aside. (*In re Marriage of Fossum* (2011) 192 Cal.App. 336) The presumption is rebuttable; the spouse advantaged by the transaction must establish that the disadvantaged spouse acted freely and voluntarily, with "full knowledge of all the facts, and with a complete understanding of the effect of the transaction." (*In re Marriage of Fossum*, at p. 344)

The Justices stated that **Family Code section 721** applies here, to the transmutation of decedent's separate property to community property and to the huge sums of money decedent transferred to defendant. It also should have been applied to the Lintz Family Revocable Trust, which was a contract between decedent and defendant both as settlers and as trustees. (*In re Estate of Badger* (1955) 130 Cal.App.2d 416) The Trust advantaged defendant by granting her an

exclusive and virtually unfettered life estate in decedent's property, disinheriting two of his three children, and giving defendant the right to disinherit the third child and pass decedent's property to her own children and to her individual estate. The probate court should have applied the presumption of undue influence thereby shifting the burden to defendant to rebut the presumption. Even without that burden, defendant did not prevail on the issue of undue influence. Her position on appeal is thus weakened.

The California Supreme Court has described undue influence, in the context of a testamentary disposition of property by will or trust, as "pressure brought to bear directly on the testamentary act, sufficient to overcome the testator's free will, amounting in effect to coercion destroying the testator's free agency." (*Rice v Clark* (2002) 28 Cal.4th 89) Defendant argues the probate court erred by voiding all trust instruments executed after the May 2005 tenth amendment based on a finding that defendant exerted undue influence, without evidence of such influence being exercised at the time the documents were actually signed.

Settled law requires a showing that the testator's free will was overpowered at the very time the will was made. (*In re Welsh* (1954) 43 Cal.2d 173) Defendant argues there is **no direct evidence** to show the decedent's free will was overborne at the time the testamentary documents were executed. The DCA notes that direct evidence as to undue influence is rarely obtainable and hence a court or jury must determine the issue of undue influence by inferences drawn from all the facts and circumstances. (*Hannam v Griffith* (1951) 106 Cal.App.2d 782) Thus, while pressure must be brought to bear directly on the testamentary act, the pressure, or **undue influence, may be established by circumstantial evidence.** (*In re Estate of McDevitt* (1892) 95 Cal. 17)

Defendant also asserts the probate court's undue influence finding was improperly made under **Welfare and Institutions Code section 15610.30**, which provides the financial abuse of an elder occurs when property is taken for a wrongful use, or with intent to defraud, or by undue influence as defined by **Civil Code section 1575**. There, the Civil Code provides that undue influence includes " ... taking advantage of another's weakness of mind; or " ... the use, by one in whom a confidence is reposed by another, ... of such confidence or

authority for the purpose of obtaining an unfair advantage over him.” (CC section 1575(a)&(b))

Here the probate court cited **W & I Code section 15610.30** to impose financial elder liability as to plaintiff’s first cause of action for fiduciary abuse of an elder. The Justices found liability supported by the court’s findings that “while decedent did not know the extent of defendant’s spending and that while it is not uncommon for a spouse to spend money or purchase items of which the other is unaware, and the line between such conduct and financial abuse is not always clear, what defendant did in this case went well beyond the line of reasonable conduct and constituted financial elder abuse.” The court concluded that much of defendant’s credit card spending and writing herself checks from decedent’s bank account during the marriage amounted to financial elder abuse.

The probate court also found defendant liable under plaintiffs’ separately pleaded fifth cause of action for undue influence. The court concluded defendant exerted undue influence specifically to procure estate plans and control over assets, according to defendant’s wishes and contrary to the wishes of decedent. The court cited **Civil Code section 1567** (“An apparent consent is not real or free when obtained through: ... 4. Undue Influence”) and **Probate Code section 6104** (“...execution of a will ... is ineffective to the extent the execution or revocation was procured by ... undue influence.”) Accordingly, the probate court found undue influence under the Probate Code, not the Welfare and Institutions Code.

Defendant argued that the probate court conflated the former **W & I Code section 15160.30** undue influence standard with the standard for undue influence under **Probate Code section 6104**. Since defendant does not challenge on appeal the findings of fact or conclusions of law contained in the statement of decision, they are presumed to be correct on appeal. The Justices thus presume the evidence supports the conclusion that defendant used undue influence over decedent to procure estate plans according to her wishes and contrary to the wishes of decedent. They note that even without this presumption, the statement of decision establishes the undue influence required to void a testamentary document; defendant’s influence overcame decedent’s free will and operated directly on the testamentary acts voided by the trial court.

The probate court described decedent as “helpless and susceptible to defendant’s wishes and influence beyond the susceptibility which is a normal incident of a marital relationship.” According to the statement of decision, decedent was fearful of defendant and unable to exercise his free will over her when it came to his money. Defendant misinformed decedent’s lawyers of decedent’s testamentary wishes and ultimately discontinued the services of decedent’s long-standing estate planning lawyers under the pretext of a fee dispute. The court noted that decedent signed the most recent estate plan prepared by defendant’s lawyer outside the presence of his new counsel and against new counsel’s advice. That document provided for unspent residue to be left to defendant’s children, and it gave defendant the power to disinherit decedent’s youngest child whom he adored. Decedent’s execution was inconsistent with the statement to his lawyer (Why shouldn’t we leave the property to [decedent’s youngest child]?) on the same day defendant insisted to the lawyer that decedent wanted everything left to her. It was also inconsistent with decedent’s great dislike for one of defendant’s children.

Undue influence in the testamentary act requires a showing that the proven facts are inconsistent with the voluntary action of the testator. (*Hagen v Hickenbottom* (1995) 41 Cal.App.4th 168) The evidence is present in this case to support a finding of undue influence. The Sixth DCA concluded the probate court applied the proper undue influence standard to void the trust documents.

Finally, defendant argues that voiding the trust documents because she “spent too much” of her husband’s money during his lifetime violates the sanctity of her marriage to decedent under the California Constitution. The argument fails because the probate court did not void the trust documents on that basis. Further, while the right to marry is protected by the California Constitution (*In re Marriage Cases* (2008) 43 Cal.4th 757), the Constitution does not diminish defendant’s fiduciary obligations to her husband, nor shield her from liability for unlawful conduct.

The judgment of the probate court is affirmed.

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