

1 CASE NUMBER: [REDACTED]
2 CASE NAME: [REDACTED]
3
4 LOS ANGELES, CA [REDACTED] [REDACTED] [REDACTED]
5 DEPARTMENT 3 HON. DAVID J. COWAN, JUDGE
6 REPORTER: [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 TIME: [REDACTED] [REDACTED]
8 APPEARANCES: [REDACTED] [REDACTED], COUNSEL FOR THE
9 PETITIONER, [REDACTED] JOSHUA D. TAYLOR, COUNSEL FOR
10 THE PETITIONER, [REDACTED]; [REDACTED] [REDACTED], COUNSEL FOR
11 THE RESPONDENT, [REDACTED] [REDACTED].
12
13 THE COURT: ALL RIGHT. GOOD AFTERNOON.
14 I'M GOING TO CALL [REDACTED].
15 MR. TAYLOR: GOOD AFTERNOON, YOUR HONOR.
16 JOSHUA TAYLOR ON BEHALF OF PETITIONER,
17 [REDACTED] [REDACTED].
18 [REDACTED] [REDACTED]: GOOD AFTERNOON, YOUR HONOR. [REDACTED]
19 [REDACTED] ON BEHALF OF THE RESPONDENT, [REDACTED] [REDACTED] [REDACTED].
20 [REDACTED] [REDACTED]: GOOD AFTERNOON, YOUR HONOR.
21 [REDACTED] [REDACTED] ON BEHALF OF [REDACTED] [REDACTED].
22 THE COURT: ALL RIGHT. THANK YOU, EVERYBODY.
23 PLEASE HAVE A SEAT IF YOU WOULD LIKE.
24 THE COURT HAS TWO SETS OF TWO IDENTICAL
25 MOTIONS, I BELIEVE. THE SAME MOTIONS BROUGHT AS OF THE
26 TWO DIFFERENT PLAINTIFFS -- TWO DIFFERENT PETITIONERS --
27 PETITIONS, EVEN THOUGH THEY'RE OTHERWISE IDENTICAL.
28 [REDACTED] [REDACTED]: CORRECT.

1 THE COURT: AND I'M -- ONE MOTION FOR JUDGMENT ON
2 THE PLEADINGS AND ONE MOTION FOR STAY.

3 THE COURT HAS REVIEWED THE MOTION,
4 OPPOSITION, AND REPLY AS TO BOTH MOTION FOR JUDGMENT ON
5 THE PLEADINGS AND MOTION FOR STAY.

6 AND BOTH MOTIONS REST IN PART --
7 PRINCIPALLY ON WHETHER THE COURT SHOULD FOLLOW BAREFOOT
8 VERSUS JENNINGS 27 CAL.APP.5TH 1 FROM LAST YEAR, I
9 BELIEVE.

10 AS YOU BOTH -- ALL KNOW, THE CALIFORNIA
11 RULES OF COURT 8.115(E)1 INDICATES THAT WHENEVER A CASE
12 IS PENDING BEFORE THE CALIFORNIA SUPREME COURT, AS IS
13 BAREFOOT VERSUS JENNINGS, IT'S NOT A FINAL FOR
14 PURPOSES -- IT'S NOT A BINDING AUTHORITY ON THIS COURT.
15 BUT IT STILL CAN BE -- MAY BE PERSUASIVE FOR AUTHORITY.
16 I THINK THAT'S THE GIST OF WHAT I'M BOUND TO DO.

17 THE COURT BELIEVES THAT THE MOTION FOR
18 JUDGMENT ON THE PLEADINGS IS NOT FILED TOO LATE EVEN
19 THOUGH THE PETITION WAS FILED BEFORE THE BAREFOOT
20 DECISION CAME DOWN. SO THE COURT WOULD REJECT THE
21 ARGUMENT THAT THIS IS UNTIMELY.

22 AND, SECOND, THAT -- AND ALSO COROLLARY TO
23 THAT -- ALSO THAT WERE -- THE COURT ASSUMES THAT IF
24 BAREFOOT WERE BINDING, IT WOULD BE RETROACTIVE SINCE
25 IT'S INTERPRETATION OF A STATUTE RATHER THAN A NEW
26 STATUTE.

27 WITH THAT BEING SAID, THE -- THE COURT HAS
28 REREVIEWED THE BAREFOOT CASE AND -- AND HAS THE

1 FOLLOWING COMMENTS: FIRST, I THINK I SHOULD PROBABLY TO
2 BE FAIR DISCLOSE THAT I'VE HAD TO ADDRESS THIS EXACT
3 ISSUE BEFORE IN ANOTHER CASE RELATED TO BAREFOOT. AND
4 IN THAT OTHER CASE, I WAS NOT PERSUADED BY THE BAREFOOT
5 DECISION.

6 AND SO I JUST THINK PROBABLY IT'S
7 APPROPRIATE THAT I BE -- I'M NOT MAKING THIS DECISION
8 TODAY TO BE CONSISTENT WITH MY PRIOR DECISION BUT JUST
9 TO NOTE THAT I'VE DONE THAT BEFORE TO THE EXTENT -- WITH
10 FULL DISCLOSURE.

11 BUT I AM ACTUALLY LOOKING AT IT
12 INDEPENDENTLY AGAIN. I DON'T EVEN REMEMBER WHICH CASE I
13 MADE THAT RULING IN BEFORE. BUT I REMEMBER HAVING TO
14 THINK ABOUT IT BEFORE. BUT LOOKING AT IT AGAIN WITH
15 ACTUALLY PRETTY MUCH FRESH EYES, IT WAS INTERESTING FOR
16 ME IN READING BAREFOOT THAT THERE'S NO REFERENCE TO
17 PROBATE CODE 24(C) WHICH BOTH OF YOU ADDRESSED. AND
18 WHICH INDICATES THAT A -- PART OF THE DEFINITION OF A
19 BENEFICIARY IS SOMEBODY WHO HAS A FUTURE INTEREST IN A
20 TRUST.

21 AND ONE THING THAT OCCURS TO ME IS THAT IF
22 THE PETITIONERS WERE SUCCESSFUL, THEY WILL HAVE AN
23 INTEREST IN THE TRUST EVEN IF THEY DO NOT NOW.

24 SO IT WOULDN'T BE SOME SPECULATIVE FUTURE
25 INTEREST. IT WOULD BE AN INTEREST THAT THEY ARGUE THAT
26 THEY DID HAVE AND THAT THEY SHOULD HAVE AGAIN WHICH
27 OBVIOUSLY THE RESPONDENT BELIEVES THEY SHOULDN'T HAVE
28 ANY LONGER.

1 SO IN THAT SENSE -- IT'S NOT CLEAR TO ME
2 THAT THE PETITIONERS DON'T HAVE STANDING. IT SEEMS LIKE
3 THEY WOULD HAVE STANDING WHICH IS THE ISSUE WHEN IT
4 COMES TO BAREFOOT, AS I SAID ALREADY, BECAUSE THEY HAVE
5 A FUTURE INTEREST.

6 SECONDLY, THE -- WE ALSO HAVE PROBATE CODE
7 SECTION 48 WHICH DEFINES AN INTERESTED PERSON VERY
8 BROADLY. I KNOW THAT'S NOT SPECIFICALLY ABOUT TRUSTS.
9 IT IS A GENERAL PROVISION OF THE PROBATE CODE THAT
10 INCLUDES PROVISIONS RELATED TO TRUST. IT DOESN'T
11 EXCLUDE TRUST. IT'S A MORE GENERAL PROVISION. AND AN
12 INTERESTED PERSON DOES, UNDER THAT DEFINITION, WOULD
13 INCLUDE EVEN A FORMER BENEFICIARY BECAUSE THEY WOULD
14 HAVE AN INTEREST IN THE PROCEEDINGS AS A PROSPECTIVE
15 BENEFICIARY IF THEIR CLAIM WAS SUCCESSFUL.

16 AND COURTS ROUTINELY RELY ON SECTION 48 OF
17 THE PROBATE CODE TO DETERMINE WHETHER PEOPLE HAVE A
18 RIGHT TO BE PARTICIPANTS IN THE PROCEEDINGS. I DON'T
19 KNOW HOW YOU COULD HAVE -- PRECLUDE PEOPLE UNDER SECTION
20 24 BUT ALLOW THEM UNDER 48. THAT WOULD SEEM TO CREATE A
21 CONFLICTING PROVISION WITHIN THE SAME CODE.

22 IN ADDITION, BAREFOOT RELIES ON THE DRAKE
23 CASE WHICH DIDN'T EVEN TALK ABOUT SECTION 24 OR ADDRESS
24 REALLY ANY OF THE CASES BEHIND 17200. IT JUST SAID --
25 PLAIN READING OF 17200 WOULD INDICATE THE BENEFICIARIES,
26 BENEFICIARY NOTICES. NO AMBIGUITY ABOUT THAT.

27 BUT I THINK THERE IS AMBIGUITY BECAUSE AS
28 I ALREADY INDICATED, SECTION 48 WOULD SEEM TO INCLUDE

1 BENEFICIARIES WHO WOULD HAVE A RIGHT TO SUE AS
2 INTERESTED PERSONS. AND, YET, UNDER SECTION 24, THEY
3 WOULDN'T. THAT'S AN AMBIGUITY. FURTHER DRAKE IS AN
4 ESTOPPEL CASE. IT'S NOT A CASE ABOUT INTERPRETING THE
5 STATUTE.

6 IT HAD TO DO WITH CAPACITY AND WHEN IT WAS
7 TOO SOON -- AND WHETHER IT WAS TOO SOON TO SUE WHEN
8 SOMEBODY WAS STILL ALIVE. AND WHETHER -- IT DIDN'T HAVE
9 TO DO WITH SOMEBODY WHO HAD BEEN ALLEGEDLY -- WHOSE
10 INTEREST HAD BEEN ALLEGEDLY IMPROPERLY REMOVED FROM THE
11 TRUST. IT WAS WHETHER IT WAS TOO SOON TO SUE, NOT
12 WHETHER SOMEBODY WHO'S ALLEGEDLY BEEN INJURED HAD A
13 RIGHT TO HAVE REMEDY. WHICH BY THIS RESTRICTIVE READING
14 OF WHAT A BENEFICIARY IS WOULD PRECLUDE.

15 IT'S -- IN MY OWN EXPERIENCE, IT'S THAT
16 EVERY DAY IN THIS COURTHOUSE WE HAVE I DON'T KNOW HOW
17 MANY CASES BROUGHT BY FORMER BENEFICIARIES SEEKING -- IN
18 THE PROBATE COURT I SHOULD SAY AS OPPOSED TO THE COURT
19 DOWN THE HALL. THIS COURT IS JAMMED WITH PETITIONS
20 FILLED WITH PEOPLE WHO ARE CLAIMING, RIGHT OR WRONG,
21 THAT THEY HAVE BEEN WRONGFULLY -- THAT THEIR TRUST
22 INTERESTS HAVE BEEN WRONGFULLY TAKEN. IN SOME CASES
23 THEY WIN; SOME CASES THEY LOSE.

24 BUT THE PROBATE COURT HAS TRADITIONALLY
25 BEEN THE FORM WHERE PEOPLE SEEK TO EXERCISE THOSE
26 RIGHTS. I THINK IT CAME TO ME AS A SURPRISE THAT THE
27 COURT OF APPEAL REACHED THIS CONCLUSION.

28 MOREOVER, I THINK THE ARGUMENT THAT THE

1 PETITIONERS RAISE, WHICH I HAD NOT SEEN BEFORE, MAKES
2 SOME SENSE. THAT IS, HOW COULD YOU HAVE A SITUATION
3 WHERE SOMEBODY WHO WAS ONLY PARTIALLY DISINHERITED AND
4 WAS LEFT WITH A PENNY WOULD HAVE STANDING. BUT SOMEBODY
5 WHO WAS TOTALLY DISINHERITED AND WAS LEFT WITH NOTHING
6 WOULDN'T HAVE STANDING. THAT MAKES NO SENSE.

7 FURTHER, I ACTUALLY THINK THAT THE COURT
8 OF APPEAL HERE IS ADDING A LIMITATION TO THE STATUTE BY
9 USING THE WORD "CURRENT" IN FRONT OF IT. IT'S IMPLYING
10 ONLY -- A BENEFICIARY IS ONLY A CURRENT BENEFICIARY.
11 THE STATUTE DOESN'T ACTUALLY USE THE WORD "CURRENT." IT
12 USES THE WORD MORE BROADLY, WHICH WHEN LOOKING AT
13 SECTION 24 OF THE PROBATE CODE, INCLUDES SOMETHING WITH
14 A FUTURE INTEREST. SO THE WAY THE COURT OF APPEAL READS
15 IT ONLY AS CURRENTLY WOULD SEEM TO BE INCONSISTENT WITH
16 SECTION 24.

17 AGAIN, I DON'T MEAN TO ARGUE WITH THE
18 COURT OF APPEAL HERE WHICH IS WHO I WOULD ORDINARILY
19 HAVE TO FOLLOW. BUT SINCE IT'S ONLY AN ISSUE WHETHER
20 IT'S PERSUASIVE OR NOT, I'M JUST INDICATING AS A TRIAL
21 COURT WHY IT MAY NOT BE PERSUADED.

22 SO FOR THOSE PRINCIPAL REASONS, I'M
23 INCLINED TO DENY THE MOTION FOR JUDGMENT ON THE
24 PLEADINGS. AND, SIMILARLY, DENY THE MOTION FOR STAY
25 THAT IS BASED ON SIMILAR CONCERNS. THEY'RE NOT
26 IDENTICAL.

27 THIS CASE HAS BEEN AROUND FOR A WHILE.
28 IT'S STILL AN ELDER ABUSE CLAIM ANYWAY. EVEN IF THE

1 SUPREME COURT FINDS OTHERWISE AND SAYS THAT THERE'S NO
2 STANDING, IT'S NOT LIKE THE CASE IS GOING TO GO AWAY.
3 THEY'LL JUST FILE IT IN THE CIVIL DEPARTMENT.

4 SO I DON'T REALLY ACTUALLY SEE ANY
5 SIGNIFICANT PREJUDICE TO THE RESPONDENT BECAUSE IT'S NOT
6 LIKE THE CASE IS -- THE ISSUE ISN'T THAT THE PETITIONERS
7 HAVE NO RIGHT TO SUE. IT'S JUST WHETHER THEY CAN SUE
8 UNDER 17200 IN THE PROBATE COURT.

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]