

Matter of the Armando I Perez Trust

Case No. 22PR00501

Rel. Case: 21PR00508 (Consv.)

Hearing Date:

October 29, 2025

Demurrer

Opposed

Decision and Ruling

On March 18, 2025, Virginia Perez Garcia filed a pleading that this Court will interpret as a Petition for Instructions. That petition asserted six causes of action and contained 22 different prayers for relief. On April 8, 2025, Patricia Perez Hogan, represented by the law firm of Bohm, Wildish & Matsen, LLP, filed a Demurrer to that petition. On June 18, 2025, this Court heard argument on the Demurrer, and ruled on the merits, overruling the Demurrer as to most of the causes of action.

On July 15, 2025, five other relatives (“Theodore Lee Perez, et al.”) filed a similar petition to the petition of Virginia Perez Garcia. Patricia Perez Hogan again filed a Demurrer, now represented by Michael Ring and Associates, using strikingly similar arguments previously raised against the Virginia Perez Garcia petition.

The Court, having reviewed all filings and having heard oral argument, overrules the Demurrer in its entirety, for the reasons stated below.

Standing

Standing is such a fundamental concept, that it is the first question a court must address before determining any other issues on the merits. If a party does not have standing, none of that party’s claims can be adjudicated on the merits. (*Barefoot v. Jennings* (2020) 8 Cal.5th 822, 827. See also *Chiatello v. City and County of San Francisco* (2010) 189 Cal.App.4th 472, 481; *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 159.)

The Court’s ruling on the previous Demurrer was supported by such unassailable authority, that it should have foreclosed any further discussion on this issue. A beneficiary’s standing, delineated in *Barefoot v. Jennings* (2020) 8 Cal.5th 822, as the California Supreme Court made it clear that **any** person claiming to have been a beneficiary of a trust, **at any time, under any iteration of the trust**, has standing to challenge the trust under Probate Code section 17200 (*Barefoot v. Jennings* (2020) 8 Cal.5th 822, 828 [“So when a plaintiff claims to be a rightful beneficiary of a trust if challenged amendments are deemed invalid, she has standing to petition the probate court under section 17200.”])), that claiming otherwise rises to the level of an unmeritorious claim.

As a result of the above authority justifying the overruling of the prior Demurrer, and the prior Demurrer’s exceeding similarity to the current Demurrer, the Court overrules this Demurrer.

The authority cited above also defeats Ms. Perez-Hogan’s standing argument as to the elder abuse statutes in the Welfare & Institutions Code, because Ms. Perez-Hogan’s entire argument

rests on a straw man; the assumption that Ms. Perez-Hogan's status as an adopted child of the Decedent wipes away any possible consideration that the Petitioners have an intestate interest in the estate. That argument would require this Court to ignore not only plain language in the First Trust instrument, but also would require this Court to ignore statutes passed to protect against elder abuse, as was alleged in the underlying petition.

According to the first iteration of the trust, the Theodore Lee Perez, et al. petitioners have a **contingent** interest in the trust property based on their blood relationship to the decedent. Specifically, section 3.2.2 of the first iteration of the trust is a residue distribution clause that states "The trustee shall distribute the residue of the trust assets as follows: to my legal heirs." Probate Code section 44 defines an heir as "any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession under this code."

Thus as the Theodore Lee Perez, et al. relatives appear to be entitled to take by intestate succession, those heirs' contingency is four-fold in this case: 1) the life of Patricia Perez-Hogan and her children (if they died, Theodore Lee Perez, et al. would still be the intestate heirs); 2) an order setting aside the order of adoption of Patricia Perez-Hogan; 3) an order finding the trust iterations after the adoption of Perez-Hogan are void; **or** 4) an order finding Perez-Hogan committed elder abuse, thus pre-deceased the decedent pursuant to Probate Code section 259.

Ms. Perez-Hogan cited to footnote 2 of the opinion in *Barefoot v. Jennings* (2020) 8 Cal.5th 822, arguing the Supreme Court specifically carved out "an heir who was **never** a trust beneficiary" from having standing to challenge the trust. But even if that footnote applied to the Theodore Lee Perez, et al. petitioners, which it does not, because they are contingent beneficiaries of the first trust, footnote 2 **does not foreclose** standing of those persons, it merely states the obvious in that case: those facts were not before the Supreme Court.

In further analysis of the footnote 3 in *Barefoot*:

We also note that defendants' restrictive interpretation of the Probate Code does not promote the public interest in preventing the administration of trust property that is procured through fraud or undue influence. This interest is expressed most clearly in section 21380, which provides that certain donative transfers (e.g., transfers to the drafter of the trust or to the settlor's caregiver) are presumptively the product of fraud or undue influence. Courts have held that "no contest" provisions in trusts cannot be used to avoid this section because that would undermine the Legislature's intent to deter persons from procuring trust benefits through fraud or undue influence. (*Graham v. Lenzi* (1995) 37 Cal.App.4th 248, 256.) Similarly, where a person fraudulently induces a settlor to amend a trust so that it transfers all of the settlor's estate to that person and disinherits all prior beneficiaries, it would undermine the public interest if a court were to rule that those valid beneficiaries had no standing to contest the fraudulently procured amendment.

(*Barefoot v. Jennings* (2020) 8 Cal.5th 822, 829.) This leaves the question to be answered whether it would undermine the public interest if a court were to rule that those valid

[contingent] heirs had no standing to contest the fraudulently procured amendment. This Court finds it **would** undermine public interest, particularly at the demurrer stage of the proceedings.

Therefore, the Demurrer is overruled as to lack of standing grounds, because the plain language on the face of the Petition at issue discloses allegations of beneficiary status to at least one iteration of the trust, and because the petitioners have intestacy rights if the adult adoption is found to have been a result of elder abuse.

Statute of Limitations Argument

The Demurrer is also overruled as to the statute of limitations grounds, because Ms. Perez-Hogan omits the fact that the same pleading at issue before the Court was filed in San Luis Obispo, and disregards the fact that the Notification by Trustee of Death of Settlor incorrectly identifies San Luis Obispo as the proper venue to file such a claim.

Ms. Perez-Hogan alleges that Trustee, Shelly McConnell, sent a Notice of the Death of Trustee to all beneficiaries of the trust, and all heirs of Mr. Perez, less than a month after Mr. Perez's death (September. 17, 2024). According to Ms. Perez-Hogan, the statutory deadline to petition for any redress requested in the subject petition was January 15, 2025.

Ms. Perez-Hogan, however, omits any mention that Petitioners filed a petition in San Luis Obispo (case no. 25PR-0006) on January 3, 2025, that appears to be the same petition as the petition at issue here.

Further, Ms. Perez-Hogan's discussion as to how the Notification by Trustee of Death of Settlor properly stated the principal place of administration as San Luis Obispo County, but failed to indicate that the Superior Court of Santa Barbara County was proper venue to file any claim, due to previous administration of the trust being in this county, as well as the physical location of the Decedent before his death.

As a result, Ms. Perez-Hogan cannot now complain that she has suffered any prejudice or surprise by allowing Petitioners' claims to proceed here, since she was on notice of all claims filed in the court in San Luis Obispo. (*Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 279 ["The criterion of relation back is whether the original complaint gave the defendant enough notice of the nature and scope of the plaintiff's claim that he shouldn't have been surprised by the amplification of the allegations of the original complaint in the amended one."].)

Therefore, the Court finds that the Notification by Trustee of Death of Settlor, dated September 17, 2024, was insufficient to trigger the statute of limitations in Probate Code section 16061.8. The Court also finds that even if the Notification by Trustee of Death of Settlor was sufficient to trigger the statute of limitations in section 16061.8, Petitioners substantially complied with the timely filing requirements in that section when they filed their original petition in San Luis Obispo County on January 3, 2025.

This conclusion appears to be supported by a popular treatise:

An action filed in a court where venue is improper must be transferred on defendant's motion to a court with proper venue (CCP § 396b). Nonetheless, the filing date in the improper court should be considered the “commencement” date for statute of limitations purposes, not the date of transfer to the proper forum. (Although there is no known California authority, this is the federal rule; see *Lafferty v. St. Riel* (3rd Cir. 2007) 495 F.3d 72, 82.)

(Cal. Prac. Guide Civ. Pro. Before Tr. Stat. of Limitations (Rutter, 2024) “Definitions and Distinctions” Ch. 1-A.)

Although the parties do not address why the case in San Luis Obispo was “dismissed” rather than transferred, it would be inequitable to improperly punish Petitioners here, when there is no evidence of prejudice or surprise, and the public policy of this state is to hear claims on their merits, not to dismiss on mere technicalities. (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 715 [“The primary consideration when applying the relation back doctrine is whether the prior complaint provided the defendant with sufficient notice of the claim in the amended complaint. [Citation.] This is due to the purpose behind statutes of limitation. They are intended to provide defendants with adequate notice of claims, so they have sufficient time to prepare a defense. This purpose is met when a new claim is based on the same facts as a prior complaint. [Citation.] Along with this consideration, courts should keep in mind our state's strong policy of deciding cases on their merits.”])

Uncertainty Argument

A cause of action is uncertain when the responding party cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against them, the pleading (or cause) is uncertain. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616 [citing Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2008) ¶7:84].)

Again here, as in the previous Demurrer, Ms. Perez-Hogan claims the subject Petition is uncertain, but then immediately outlines how the prayer for relief cannot possibly be granted by specifically explaining what the claims against her are, and why she cannot be held liable to respond. The current Demurrer at issue points to no facts or allegations that create ambiguity or uncertainty. And as Ms. Perez-Hogan did not include an argument in support of uncertainty, the court ascertains Ms. Perez-Hogan must have abandoned such claim.

Conclusion

The Demurrer is overruled in its entirety.