No. 19-7174

IN THE SUPREME COURT OF THE UNITED STATES

ESTATE OF PATRICIA STEWART, Deceased,

JOHN H. STEWART - PETITIONER

vs.

MICHAEL DOWNEY, As Administrator, et al. – RESPONDENTS

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE
FIRST DISTRICT COURT OF APPEAL OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT COURT OF APPEAL OF CALIFORNIA

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QUESTIONS PRESENTED

1. Was Petitioner's federal constitutional right to due process of law violated by an unfair trial in which the trial Judge ruled "that any documents which the Court takes judicial notice of, of course, are admissible." A148501[1] 1/4/16 R.T. 151:5-7 (emphasis added), and the subsequent admission as evidence in a jury trial, under the guise of judicial notice, of numerous irrelevant and prejudicial hearsay statements, including multiple Superior Court orders and opinions and multiple California Court of Appeal opinions, including the admission into evidence of a Superior Court judgment of dissolution of marriage, and a decision in a domestic violence restraining order case that had been ordered vacated as void by the Superior Court of Humboldt County, California, the entire 129 page reporter's transcript of the dissolution of marriage trial in FL070587 (*Stewart v. Stewart*, Exhibit Q, A148501 C.T. v. 9, 2432-2561), and by the admission as evidence in a jury trial of a domestic violence request for order form (Exhibit X, A148501 C.T. 2661-2665) that was speccifically held inadmissible as prejudicial hearsay in *People v. Pantoja* (2004) 122 Cal.App.4th 1, 12-13?

2. Was Petitioner's federal consitutional right not to be deprived of property without due process of law violated by the unexplained refusal of the Superior Court to give any legal effect to the written assignment (A148501 C.T. 1485-1486) to Petitioner of the inheritance rights of Patricia Stewart's sole intestate heir?

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[1] Because the record is spread between both of the Clerk's Transcripts in A148501 and A148396, citations herein to a Clerk's Transcript (C.T.) are prefaced by the case numbers of the C.T.. Later citations in the same paragraph are to the same C.T.

LIST OF PARTIES

Petitioner is John Stewart. He was plaintiff is the lower courts in his action against Patricia Stewart for breach of contract; he was Petitioner in an action he filed to probate a will of Patricia Stewart (PR090073), and he was the contestant in a will contest (PR09072) filed against the former nurse of Patricia, James Lewis Taylor. Taylor filed a will contest against the will of Patricia Stewart proffered by John Stewart, and filed a petition to probate a will naming him as executor and main beneficiary of a will that was literally signed on Patricia's deathbed less than three days before her death.

James Taylor was formerly licensed as an R.N. and was hired by the Stewarts to help care for Patricia as she became more disabled from multiple sclerosis.

William and Ronda Rolff own property adjacent to the Stewart ranch, and had Patricia sign a deed to them of the Stewart ranch, despite the existing *lis pendens* and for a price that rendered Patricia insolvent, as was deemed admitted by the Administrator of her Estate. The Rolffs were allowed to intervene in Stewart's case against Patricia for breach of contract (DR081020). Taylor was also allowed to intervene in that case.

Decedent Patricia Stewart's estate was formerly represented by the Humboldt County Coroner/Public Administrator David Parris, but his offices were later consolidated into the office of the Sheriff of Humboldt County, Mike Downey. Mr. Downey has since retired and the current Sheriff/Coroner Public Administrator of Humboldt County, California, is William Honsal.

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PETITION FOR WRIT OF CERTIORARI

Petitioner John Stewart respectfully prays that a writ of certiorari issue to review the opinion and judgment of the First District Court of Appeal of California, filed on April 18, 2019, attached hereto as Appendix A. All Appendices are described at page iv.

OPINION BELOW

The opinion of the highest state court to review the merits appears at Appendix A to this petition, and it is unpublished. That opinion, of the California First District Court of Appeal, is reproduced in the Appendices ("App.") hereto as Appendix A starting at page 1. Appendix A is a true copy of the opinion of the California First District Court of Appeal in A148396 and A148501, filed April 18, 2019, affirming the judgments attached hereto as Appendix B. No rehearing was sought in the Court of Appeal.

Attached hereto as Appendix B is a true copy of the judgment entered May 5, 2016 by the Superior Court of California for the County of Humboldt in DR081020. No formal judgment was filed in PR090102, but the Minute Order is included.

Attached as Appendix C is a true copy of the order of the California Supreme Court filed July 10, 2019 my Petitioner's Petition for Review filed May 31, 2019.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) because Petitioner's rights under the 14th Amendment to the Constitution of the United States were violated by the courts below.

The decision of the California Court of Appeal for which petitioner seeks review was issued on April 18, 2019 (App. A). The California Supreme Court order denying

petitioner's timely petition for discretionary review was filed on July 10, 2019, and is included herein as Appendix C.

An extension of time to file this petition for a writ of certiorari was granted to and including December 7, 2019, by Justice Kagan, on October 1, 2019, in Application No. 19A643.

28 U.S. Code § 1257(a) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

This Court has jurisdiction under 28 U. S. C. § 1257(a) because the court below deprived Petitioner of his right to due process of law, and deprived Petitioner of property without due process of law, rights that are guaranteed by the 14th Amendment.

In the words of Rule 10(b) of this Court, "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals".

The opinion below directly conflicts with the opinion in *Drye v. United States*, 528 U.S. 49, 60 (1999) that the right of an heir to inherit is a property right and an assignment of that right is to be enforced by the courts.

The opinion below directly conflicts with numerous federal court opinions that hearsay is not admissible as evidence, including *Queen v. Hepburn*, 11 U.S. 290 (1813)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the 14th Amendment to the United States Constitution states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

18 U.S. Code § 1962(a):

> "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer."

The texts of California Civil Code § §§ 3439.04 and 3439.05, California Family Code: § 2340, California Family Code: § 2341, California Welfare And Institutions Code § 15610.23, 27 C.F.R. § 450, and former Rule 5-200 of the California Rules of Professional Conduct: are set forth in Appendix E.

INTRODUCTION

This is a case about the financial abuse of a dependent adult and the harm that can

be done when a judge deprives a person of property without due process of law and treats the rule against hearsay evidence as a mere inconvenience that can be dispensed with under the erroneous pretext "that any documents which the Court takes judicial notice of, of course, are admissible." A148501 1/4/16 R.T. 151:5-7 (emphasis added).

Petitioner raised these federal constitutional issues at every stage of the proceedings below as best he could. Petitioner repeatedly objected to the admission of hearsay in the trial court, but the opinion of the Court of Appeal (App. A) does not even contain the word "hearsay" despite the fact that is was repeated 18 times in this connection in the opening brief filed by Stewart in A148501 in the Court of Appeal.

STATEMENT OF THE CASE

John and Patricia met as undergraduates at the University of California in the 1970's. In 1993 they entered into a "Marvin[1]-type" agreement substantially identical to the agreement in *Byrne v. Laura* 52 Cal.App.4th 1054, (1997). 1/4/16 R.T. Augment 13:19-14:14; 1/6/16 R.T. 552:24-555:26; 576:6-28; 594:28-595:26; 607:25-608:17.

As the Superior Court stated when it overruled Taylor's demurrer to Stewart's first amended complaint, "Plaintiff's first amended complaint alleges that the parties entered into an agreement at a time they were not married, and the agreement includes promises that are not part of a standard marital relationship, including Plaintiff's promises to give up his career and stop practicing law, to move over 100 hundred miles from the Bay Area to Humboldt County, to not work other than at the ranch, and to remain at the ranch following Patricia's death with all the parties' mutual pets until the last of those pets died.

[1] *Marvin v. Marvin*, 18 Cal.3d 660, (1976)

Agreements to move and give up a career, etc. are not part of a standard marital relationship. The complaint is sufficient as against a general demurrer." A148501, C.T. 150:6-13.

Pursuant to the Marvin-type agreement[2], they moved to Humboldt County in April, 1994, to a property that, as Patricia testified, she purchased for John (A148501, C.T. 2232:2-7), and started homesteading and operating a commercial vineyard at 5000 Crooked Prairie, Ettersburg, herein called the Stewart ranch or the ranch. Products of the vineyard were sold in interstate commerce. Plaintiff's Exhibit 9 was a bottle of pinot noir produced from that vineyard, including a TTB officer approved label (27 C.F.R. § 4.50(a)), that proclaimed to the whole world that the vineyard was owned by "Patti and John Stewart". Exhibit admitted at 1/7/16 R.T. 644:20-26.

After moving to the ranch, the agreement was modified to provide that the survivor could not leave the ranch until after all their mutual pets had died. C.T. 20; 1/4/16 R.T. 251:5-18. They later got married on October 31, 1994.

Numerous witnesses including Patricia's sister and friends, including her friend Ms. Balletta (who operates a women's shelter), testified to the existence and terms of the agreement, and the jury found that the parties did made the agreement alleged in the First Amended Complaint. App. B, page 2.

The main house burned down on May 11, 2003 and, following litigation and mediation with their insurer, they built a new, unique, architect designed, mostly ADA compliant, permitted house and off-grid energy system. They moved into the new house

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[2] 1/6/16 R.T. 594:28-595:26.

on March 3, 2007. The house has many custom features, including wood flooring and paneling created from trees from the ranch, and custom tile work. 1/4/16 R.T. 245:15-247:15.

Pursuant to the *Byrne v. Laura* agreement, (1/6/16 R.T. 576:6-28; 594:28-595:26) Patricia executed a will, (A148396 C.T. 7-12) on April 9, 2007, leaving all her property to Petitioner. Also pursuant to their agreement, on May 15, 2005 John and Patricia executed and delivered an Interspousal transfer deed, taking title to the ranch as community property with right of survivorship. A148501, C.T. 2197-2202.

Patricia executed a later will naming her sister Deborah Lean as executrix and main beneficiary on November 8, 2007 (A148501 C.T. 2209-2212), and on February 20, 2009 executed a will naming nurse Taylor as executor and main beneficiary (Exhibit AA) A148501, C.T. 2668-2671.

Patricia had bipolar disorder starting in her youth (1/6/16 R.T. 539:11-13), and was later diagnosed with MS (1/6/16/ R.T. 546:13-14). She became progressively more disabled from MS, and the Stewarts hired a nurse, James Lewis Taylor, to assist in her care in 2007. Taylor, according to his own testimony, and unbeknownst to Petitioner and without the approval of any of her physicians, stopped giving Patricia the Tegretol she needed to control her bipolar disorder. 1/6/09 R.T. 522:8-14.

> "[I]f she got manic, it pretty much meant she wasn't taking Tegretol.
> "Q Okay. Is that a medical opinion or just your own personal knowledge or what?
> "A Both. A manic depressive who is not taking a medication to stabilize their mood can get manic." Testimony of Deborah Lean, M.D. 1/6/16/ R.T. 537:12-18, 545:4-9.

Deborah also testified that Patricia admitted to her that she and nurse Taylor has been having sex. 1/6/1/6 R.T. 563:3-14.

On April 20, 2007, Humboldt County APS determined Patricia was a dependent adult[3] and well cared for by John (C.T. 2188:II-H). Nurse Taylor also testified that Patricia was a dependent adult. 1/5/16 R.T. 437:3-8.

In October, 2007, Taylor pointed a loaded firearm at a guest in the family home. He presumably knew that he would get fired for having done that, and he absconded with Patricia that evening. Petitioner then filed a petition for a civil harassment restraining order against Taylor, which was granted and remains in force. *Stewart v. Taylor*, Humboldt County Case No. CP070461.

Patricia then filed a petition for a domestic violence restraining order (*Stewart v. Stewart*, Humboldt County Case No. CP070464), against Petitioner, which was initially granted but was later ordered to be vacated as void (A148501, C.T. 1424-1427), and that action was dismissed. C.T. 1429. She also filed an action for dissolution of marriage in *Stewart v. Stewart*, Humboldt County Case No. FL070587. Petitioner made the required objections to the dissolution of the marriage status, and the judgment was stayed by operation of law under the provisions of Family Code § 2341 three days before Patricia died. A124777. The Court of Appeal later granted her a posthumous dissolution in *In re Marriage Of Lean and Stewart,* A124777 (January 26, 2012. That opinion was given to the jury as Defendants' Exhibit F (A148501, C.T. 2317-2372) despite Stewart's objection that it was inadmissible hearsay.

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[3] Welfare And Institutions Code § 15610.23 defines "dependent adult".

After Patricia filed the dissolution action, Petitioner filed a conservatorship petition on January 31, 2008, Humboldt County Case No. PR080037. The court in the conservatorship action refused to order a neuropsychological evaluation of Patricia and, despite the fact that the Court appointed investigator testified that Patricia was in need of a conservator of the person and the estate, and despite the fact that her treating physician averred that Patricia suffered from major impairment in her ability to plan, organize, and carry out actions in her own rational self-interest (A148396 C.T. 457 item 5(B)(6)), the jury declined to impose a conservatorship. That case was on appeal when Patricia died, which mooted most of the appeal. *Conservatorship of Stewart*, A123544 (August 23, 2011).

On February 6, 2009, Decedent signed a deed to the Stewart ranch to William and Ronda Rolff. C.T. 132-134. Petitioner herein refers to them collectively as "Rolff".

At the time Patricia died on February 23, 2009, the dissolution judgment in FL070587 had been stayed by operation of California Family Code § 2341 and Petitioner believed that she had died as a married woman, and he was not aware of the existence of any later Wills signed by Patricia. He filed a petition to probate the April 9, 2007 Will, in PR090073, *Estate of Patricia Stewart*, on February 27, 2009. A148396 C.T. 2-5.

On March 23, 2009, nurse Taylor filed a petition to probate a Will (A148396 C.T. 382) signed on Patricia's death bed in the hospital two and a half days before she died, with advanced MS, in PR090102, *Estate of Patricia Lean.*

On April 16, 2009, Petitioner filed a will contest in PR090102 (A148396 C.T. 412-418) and later filed an amended will contest (A148396 C.T. 420-426). He filed a

second amended will contest on July 24, 2009. A148396 C.T. 862-869. On April 30, 2009, Petitioner filed a Creditor's Claim in PR090073. A148396 C.T. 464-465. The same creditor's claim was filed by Petitioner in PR090102 on May 1, 2009. PR090102, Register of Actions, page 2. A148396 at end of vol. 5.

The Superior Court consolidated both of the probate cases in an order filed May 21, 2009 (A148396 C.T. 566-567), and appointed the Public Administrator as Special Administrator on the same date. A148396 C.T. 569-570.

The court then consolidated the probate cases with DR081020 "for all purposes so that only one set of findings of fact and conclusions of law (if any) will be filed, and only one judgment (if any) will be entered.", by order filed September 4, 2009. A148501, C.T. 94-95.[4]

After the dissolution action was filed, Petitioner filed a civil action against Patricia on November 5, 2008, based on the parties' *Byrne v. Laura* agreement, DR081020, *Stewart v. Stewart*, seeking specific performance of the agreement and damages for the time he was wrongly excluded from his home and ranch. A148501, C.T. 1. A *lis pendens* was recorded and filed. A148501, C.T. 4-10.

Patricia was served and failed to file a responsive pleading and her default was entered and then set aside. Petitioner then filed an amended complaint. C.T. 18-21. Even though the complaint was verified, her answer was not verified. C.T. 22-24.

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[4] On March 25, 2016, the Assigned Judge *sua sponte* made an oral order deconsolidating the three cases, with no prior notice to any party that such an order was being considered. A148396 C.T. 1158.

Petitioner's counsel vigorously took exception to the unverified answer, thereby implicitly moving to strike it out or to exclude all evidence. 12/29/15 R.T. 102:4-9.

The First Amended Complaint in, filed April 30, 2009, changed the remedy sought from specific performance to quasi specific performance. A148501, C.T. 18-21.

On May 7, 2009, Decedent's attorney filed an answer asserting four affirmative defenses.

Petitioner filed a motion on April 30, 2009 in DR081020 to substitute the Public Administrator as the defendant in place of Patricia. The motion was granted on June 19, 2009. Minutes, page 5 of Omissions filed August 28, 2017 in A148396.

On August 3, 2009 the Court denied Stewart's motion for a preliminary injunction[5] and granted an *ex parte* motion allowing William Rolff to intervene in this action and declaring the he was a "necessary party". Minutes of August 3, 2009, page 1 of Supplemental C.T. (Omissions) filed September 22, 2017. Rolff filed a complaint in intervention on November 9, 2009. C.T. 112-139. Petitioner filed demurrers and a motion to strike that complaint in intervention on February 16, 2010. Omission filed September 29, 2017, pp. 29-49. The motion to strike was granted and the demurrers were

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[5] The denial of the preliminary injunction was the subject of a prior appeal in this action. *Stewart v. Parris*, A126382. The opinion, filed July 21, 2010, concluded: "We note that an order granting or denying preliminary relief reflects nothing more than the trial court's evaluation of the controversy on the record before it at the time of its ruling; the order "is not an adjudication of the ultimate merits of the dispute." (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1109; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.) Plaintiff is entitled to proceed to trial to prove the allegations of his complaint. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678, fn. 8.) We hold only that the trial court did not abuse its discretion in denying the request for a preliminary injunction." (Emphasis added.) The opinion in A126382 (Appendix D) was given to the jury as Defendants' Exhibit D, A148501, C.T. 2266-2278 despite Stewart's repeated objections that it was inadmissible hearsay.

overruled on March 23, 2010, and a written order was filed on May 3, 2010. C.T. 551-560.

Rolff filed a first amended complaint in intervention on May 25, 2010. C.T. 572-598. Petitioner filed a motion to strike that complaint in intervention, but the Court denied the motion because it had found that Rolff was a "necessary party". Omission filed September 22, 2017, page 2. Petitioner also filed a demurrer to that complaint in intervention, which was overruled on April 7, 2010 in an order that stated Petitioner was not required to file an answer to the complaint in intervention and that the allegations therein were deemed to be denied. C.T. 553.

James Taylor also filed a complaint in intervention, on October 1, 2009. A148501, C.T. 99-103, 163-183.

On December 21, 2009, Taylor filed a document styled "answer to first amended complaint for breach of contract of John Stewart (via verified complaint in intervention)". A148501, C.T. 156. That document was not verified by Taylor, C.T. 161.

Taylor filed a first amended answer on January 19, 2010. A148501, C.T. 262-363.

On April 17, 2014 the Court filed a scheduling order (A148501, C.T. 1122-1123) stating that the issues should be tried is the following order: first, the validity of the will nominating Taylor as executor, then the validity of the will nominating Petitioner, then the appointment of an executor to represent the estate in DR081020. That order also stated that there was to be a hearing on the admissibility of the deed to the Rolffs, and an evidentiary hearing to the admissibility of the certificate of independent review appended to the will nominating Taylor. C.T. 1123. The Assigned Judge disregarded the April 17,

2014 order, and let DR081020 go to trial without first appointing an executor. The court never held any hearing on the admissibility of the deed to the Rolffs, and never held a contested evidentiary hearing on the validity of the certificate of independent review.[6]

Rolff filed a first amended complaint in intervention on May 25, 2010. C.T. 572-598. That complaint was never set for trial.

On May 26, 2011, Petitioner filed a motion to compel responses to special interrogatories, and for sanctions, directed to the Special Administrator (C.T. 763-770), and a motion for a "deemed admitted" order (C.T. 771-778). Those motions were all granted on July 1, 2011 (C.T. 802), and a written order was filed on July 14, 2011. C.T. 817-818. Among the admissions deemed admitted by the personal representative were that the ranch was worth more than double what the Rolffs agreed to pay for it, that Patricia "was insolvent on the date of her death" and that her "Estate would not have been insolvent if Patricia Stewart had not deeded the ranch to William and Ronda Rolff." A148501, C.T. 775.

Rolff filed a motion and then on October 2, 2015, an amended motion (A148501, C.T. 1532-1547) to set aside the deemed admissions made by the Special Administrator, in which the Administrator joined. C.T. 1550-1551. Petitioner opposed the motion. C.T. 1555-1561. Their motion was denied in an order filed December 16, 2015. C.T. 1572-1575. However, Petitioner contends that the Court erred when it stated in that order that "Intervenor Rolff is not bound by the admissions." C.T. 1573:25. Rolff was bound by

[6] The court did hold a sham hearing, from which Petitioner and his counsel were excluded (A148396 3/23/16 R.T. 49:23-50:3), on the admissibility of the certificate of independent review. See A148396 3/24/16 R.T. page 2.

the admissions as Patricia's successor in interest, and the deed was void for illegality as a fraudulent transfer. Civil Code §§ 3439.04(a)(2); 3439.05(a). The Court of Appeal never ruled on that issue,

On September 20, 2013 Petitioner associated Mr. Weiss as co-counsel. A148501, C.T. 935-936.

On January 24, 2014 Petitioner filed a motion to exclude the deed to Rolff. A148501, C.T. 960-972. Rolff filed an opposition. C.T. 983-988. Taylor also filed an opposition. C.T. 1008-1063. Petitioner filed a reply (C.T. 1084-1087) which included the following offer of proof: "Plaintiff is prepared to have a qualified expert witness, Michael Retzloff, testify that the price paid by Rolff was not 'market value' at the time of the fraudulent transfer, and was not a 'reasonably equivalent value' under Civil Code § §§ 3439.04 and 3439.05." C.T. 1085:3-6, see 7/31/17 Omission 17:12. As to that motion, the Court filed an order on April 17, 2014 (C.T. 1122-1123) stating, "The Court will conduct a hearing pursuant to Evidence Code section 402 on the admissibility of the deed transferring title to real property to William and Ronda Rolff". C.T. 1123:20-22. No such hearing was ever conducted, and the appraiser was not allowed to testify. R.T. 1/7/16 618:21-619:3.

Counsel stated that the appraiser would testify to the value of the ranch. 1/7/16 R.T. 615:10-12. Counsel argued this testimony was relevant to the issues of unconscionable injury and unjust enrichment which are elements of the cause of action for quasi-specific performance, and relevant to the fraudulent transfer defense to Rolff's complaint to quiet title. 1/7/16 R.T. 615:25-616:27. The lower court ruled that the issue

of equitable estoppel to preclude a statute of frauds defense was relevant to the probate matter but not to the contract action. 1/7/16 R.T. 615:20:24; 617:7-13. Petitioner contends that it was prejudicial error to exclude appraiser Retzloff's testimony.

On April 4, 2014 Stewart filed a request for judicial notice of findings of fact that Rolff was the "ringleader and financiare (*sic*) of the marijuana growing operations" contained in the reporter's transcript of January 4, 2007 hearing, during which William Rolff was sentenced in *People v. William Rolff*, Humboldt County Case No. CR063146. A148501, C.T. 1111-1117. Rolff filed an objection on April 11, 2014. C.T. 1118-1119. Stewart filed a reply on April 18, 2014. C.T. 1125-1129. That request for judicial notice was effectively denied on December 28, 2015 when the Court denied Stewart the right to present a defense of illegality based on RICO[7] to Rolff's complaint to quiet title, and granted Rolff's April 22, 2014 motion (Omission filed September 29, 2017, pp. 251-254) to exclude evidence of his criminal conviction. 12/28/15 R.T. 64:25-70:26.

Rolff filed a request for judicial notice on May 6, 2014. C.T. 1202-1261. Rolff asked the Court to take judicial notice of the document, Exhibit W, styled "Decision" filed December 3, 2007 in the domestic violence restraining order case, *Stewart v. Stewart*, Case No, CP070464, as well as the "decision on petition for dissolution of marriage" (Exhibit I) and the judgment in FL070587 Exhibit C), the Court of Appeal opinion in A124777 (Exhibit F), and the deed from Patricia to the Rolffs. Stewart filed an opposition thereto on May 13, 2014. Omission filed September 29, 2017, pp. 257-260. Rolff's request for judicial notice was granted. 12/28/15 R.T. 90:22-91:14. Stewart

[7] 18 U.S. Code § 1962(a),

contends that granting that motion for judicial notice was erroneous, and that admitting all those documents into evidence was prejudicial error.

Petitioner filed three motions in limine to exclude evidence on May 14, 2014. C.T. 1269, 1271, 1273. Motion in limine #1 was to "exclude all evidence, testimony or argument relating to the Domestic Violence Prevention Act or any orders or proceedings in CP070464, or any allegations made in that action." C.T. 1270:1-2. Stewart argued that such evidence was prejudicial, irrelevant, immaterial and risked inflaming the jury, and that the orders in CP070464 were vacated as void and the action was dismissed. C.T. 1270:4-8; 12/28/15 R.T. 48:13-26. Rolff filed an opposition. C.T. 1352-1354. Stewart filed a reply to the opposition. C.T. 1421-1429. Stewart also argued the documents to be excluded were all hearsay. 12/28/15 R.T. 48:11. That motion was denied. 12/28/15 R.T. 63:21-22.

Motion in limine #2 sought to exclude "any and all evidence, testimony or argument relating to allegations that plaintiff ever physically or sexually abused Patricia Stewart." C.T. 1272:2-3. Stewart argued such evidence would be prejudicial, irrelevant, immaterial, and risked inflaming the jury. C.T. 1272:10-12. Rolff filed an opposition to Petitioner's motion in limine #2. C.T. 1361-1362. Stewart filed a reply C.T. 1430-1432. That motion was also denied. 12/28/15 R.T. 63:28.

Stewart's Motion in limine #3 sought an order "excluding any and all hearsay statements allegedly made by decedent Patricia Stewart whether the hearsay statements are contained in declarations, stated by witnesses or recorded in any transcript. The motion was based upon the ground that the evidence is prejudicial to plaintiff, risks

inflaming the jury, and that such evidence and argument is irrelevant and immaterial to the issues in this action and therefore inadmissible." C.T. 1274:1-7. Stewart also noted that the self-serving declarations of a deceased person are not admissible. C.T. 1274:8-11. Rolff filed an opposition. C.T. 1365-1367. Rolff had filed a supplemental opposition to all three of Stewarts motions in limine on August, 20, 2014, combined with a notice of intent to offer hearsay pursuant to Evidence Code § 1370. C.T. 1443-1453. The intent to offer hearsay specified that Rolff wanted to "offer the declaration of Patricia Stewart in the form of a 'Request for Order-DV100', filed October 24, 2007 in Case No. CP070464." C.T. 1444:2-3. No other party ever served any notice of intent to offer hearsay.

Stewart's motion in limine #3 was also denied. 12/28/15 R.T. 54:1. Stewart contends that the denial of each of his motions in limine was erroneous and prejudicial.

Taylor filed four motions in limine (A148396 C.T. 985-1003), and several supplements. A148396 C.T. 977, 1016. Three of those motions in limine applied only to the probate cases, but motion in limine #4 (A148396 C.T. 998-1003) sought to exclude declarations before any declarations had been offered in evidence. That motion was granted as unopposed. 12/28/15 R.T. 71:16-22; A148501, C.T. 1710.

On April 29, 2014 Stewart's co-counsel served notices to appear at trial and produce documents or things on both Taylor and Rolff. Rolff filed an opposition on June 27, 2014 calendared to be heard on July 14, 2014. C.T. 1386-1390. Set for the same date was a joint motion filed by Taylor and the Public Administrator to exclude the testimony of Stewart's expert witnesses, appraiser Michael Retzloff and treating physician Dr.

James Guetzkow. C.T. 1393-1396. Stewart opposed the motion as part of his opposition to the administrator's motion to quash subpoenas, filed August 20, 2014 (A148501, C.T. 1398-1404) and in a supplemental opposition filed December 2, 2014. C.T. 1468-1470.

On July 11, the July 14 hearing was reset to July 25, 2014. A148501, C.T. 1407. Petitioner served amended notices to appear on Taylor, Rolff, and the special administrator on June 27, 2014. C.T. 1408-1420. The motions were reset on July 25, 2014. C.T. 1433. The cases were repeatedly postponed and reset until September 18, 2015, when the trial date of December 28, 2015 was set. A148501, C.T. 1526.

On December 2, 2015 Petitioner served Rolff with a new notice to appear at trial and to produce documents. A148501, C.T. 1577-1581. A similar notice was served on Taylor on the same date. C.T. 1582-1587.

On December 9, 2015, Rolff filed an objection to the notice to appear and produce documents. A148501, C.T. 1566-1569. Taylor also filed an objection to the notice to appear that was directed to him, on December 22, 2015. A148501, C.T. 1589-1595.

On December 28, 2015 Petitioner filed a motion to compel Rolff to obey the notice to appear. A148501, C.T. 1689-1707. On that date, the Court denied all of Stewart's motions in limine and granted all but one of the motions in limine filed by Rolff and Taylor. C.T. 1708-1711. The court also granted a request for judicial notice Rolff had filed that day. C.T. 1730-1734. On the same date, Stewart filed a motion to try to force the Public Administrator to obey the notice to appear at trial and produce documents he had served on the administrator on June 24, 2014. A148501, C.T. 1735-1745. On the same date, Stewart filed replies to the trial briefs previously filed by Rolff

(C.T. 1754-1767) and Taylor (C.T. 1748-1753. The Court never enforced any of the notices to appear and produce documents. 1/4/16 R.T. 161:17-162:18 Petitioner argued:

> "Then I guess we are talking about whether Stewart has been unconscionably injured, and that is a measure of damages, so that is why we want to look at the estate -- I mean look at like photos of the property, things like that, from what it was to what it is. People are going to actually -- it is demonstrative evidence. People can see what it looks like." 1/6/16 R.T. 466:28-467:6.

The Court ruled that photos depicting the Stewart home and ranch were not relevant, thus preventing Stewart from presenting evidence. 1/6/16 R.T. 465:23-466:24.

On December 29, 2015 the lower court allowed County Counsel to add a new affirmative defense of breach of contract to the answer over Petitioner's objections. 12/29/15 R.T. 101:25-102:28.

On January 4, 2016 the Administrator filed a Motion to exclude all evidence. A148501, C.T. 1795-1802. That motion was denied. C.T. 1791. The administrator also filed motions to exclude records of Adult Protective Services, to exclude the testimony of James Dawson (the Court appointed investigator in PR080037 and one of Stewart's expert witnesses), and to quash a subpoena for medical records from the Southern Humboldt Community Healthcare District. The motion to exclude James Dawson as a witness was granted unless he was called as a rebuttal witness. C.T. 1791.

On January 4, 2016, Petitioner filed a motion in limine to exclude prior judgments, orders, testimony and documents (A148501, C.T. 1807-1811). Petitioner's motion to exclude prior judgments, orders, etc. was denied on the same date. C.T. 1790.

On the same date, the first witnesses were called. Witness Rafael Silverman y de la Vega was a Ph.D. student in biochemistry at U.C. Santa Cruz when he testified. 1/4/16

R.T. 197:20-198:3. He testified to multiple admissions made by Patricia about the existence of portions of the contract alleged by Petitioner. He had met Patricia before he ever met Petitioner. 1/4/16 R.T. 202:25-27.

> "Q I am going to ask you about conversations you had with Patty (*sic*) Lean. Did she ever make comments to you whatsoever about ownership of the ranch, if there was a deal with John?
> A She actually mentioned it pretty regularly.
> Q How would that come up in conversation?
> A She would mention since John was taking care of her and the animals that she was going to give the property to him when she died so he would take care of the animals." 1/4/16 R.T. 191:19-27.
>
> "Q (By Mr. Weiss) Over the period of five years, how many times do you think she would bring that up if you have an estimate?
> A Definitely at least once per visit. I would think more often, but I wouldn't count." 1/4/16 R.T. 192:3-7. See also 1/4/16 R.T. 204:5-15. ("She made it very clear.")

He also testified that he never observed Petitioner abuse Patricia in any way. 1/4/16 R.T. 193:7-11; 193:25-194:11.

The next witness, Cliff Perry was age 63 and a disabled retired veteran (1/4/16 R.T. 208:3-6) when he testified, that he had met Patricia long before he ever met Petitioner. 1/4/16 R.T. 206:9-10; 220-:27-221:3. He testified that he knew her well, and was one of her housemates in Santa Rosa in 1992 and 1993. 1/4/16/ R.T. 209:16-24; 226:8-13. He had personal knowledge that Patricia had bipolar disorder. 1/4/16 R.T. 212:17-213:2. He testified that Patricia admitted to him that she and Petitioner were partners. 1/4/16 R.T. 216:26-217:16.

> "They were partners. They owned the land together. They bought that land. It was their plan. When I talked to Patty (*sic*) in Santa Rosa, she told me her and John had every intention of going up to Humboldt County and buying land up in Humboldt somewhere, but I didn't know exactly where." 1/4/16 R.T. 218:27-219:4. According to this testimony, the partnership agreement was made in

Santa Rosa prior to the parties moving to the ranch, as alleged in the complaint. A148501, C.T. 20 ¶ BC-1.
"Q (By Ms. Jackson) Did she ever tell you that Mr. Stewart was her partner because he was her husband?
A No.
Q She just said that she and John were partners?
A Yes.
Q During their marriage?
A Before that. Before that. They were partners before they got married. I think they actually bought the land before they got married." 1/4/16 R.T. 223:26-224:6.

Mr. Perry also testified that Petitioner never mistreated Patricia and she never complained to him that Petitioner was abusing her. 1/4/16 R.T. 218:25-219:4. He heard Patricia admit and also observed that Stewart was taking care of Patricia and the ranch. 1/4/16 R.T. 22-:2-17. He testified that Stewart, "pretty much did everything. He cooked. He took care of the vineyard. He took care of Patty (*sic*)." 1/4/16 R.T. 212:3-4.

Mary Balletta testified,

"I am employed currently and have been employed for the past 13 years as the executive director at the Women and Children's Crisis Shelter in Southern Humboldt which we all call WISH." 1/4/16 R.T. Augment 6:10-13.
"Q What is the business so to speak of that organization?
A We are a nonprofit supported by grants and donations to assist with families, and women and children in crisis from domestic violence or other pressing crisis." 1/4/16 R.T. Augment R.T. 6:14-18.

Ms. Balletta is a certified and very experienced domestic violence counselor. 1/4/16 R.T. Augment 7:1-20. When the WISH shelter was full, she occasionally sent clients to stay at the Stewart ranch. 1/4/16 R.T. Augment 8:3-13.

Ms. Balletta testified that she never observed Petitioner abuse Patricia, never observed any indicators that Patricia was being abused by Petitioner, and that Patricia never complained to her of any abuse by Petitioner. 1/4/16 R.T. Augment 9:21-10:9;

19:27-20:2. She also testified that Patricia admitted the existence of the contract alleged in the complaint.

> "Q (By Mr. Weiss) Tell us what she said, Ms. Lean. What did she tell you about the ownership?
> A Patty (*sic*) said John was going to take care of her and the property until one of them died, and the other one would finish off with take caring of their animals, and then the property would go to the boys.
> Q Did she say anything about property going to Mr. Stewart?
> A Well, it was a contract between the two of them. It was like a partnership.
> Q This is what she told you?
> A That is correct." 1/4/16 R.T. Augment 14:3-14.
> "Q What did she tell you?
> A It was always a life partnership between her and John, you know. John would be taking care of her until the end of her life, and he would then inherit the property that was theirs." 1/4/16 R.T. Augment 16:16-20.
>
> Her testimony made it clear that the contract alleged by Petitioner predated the marriage.
> "Q They were married when Patricia allegedly mentioned the word "contract"?
> A No. Before when they first moved up here -- it was long ago. Before they were married, they lived in Santa Rosa. I don't know if you want to know this, but -- and that is when they first started talking about moving up here and creating a homestead where John would move up here with her and stay home with her. And for John and Patty (*sic*), that was their contract. Maybe that is a term I used. I don't remember." 1/4/16 R.T. Augment 32:23-33:4.

Petitioner also testified to the terms of the agreement. 1/4/16 R.T. 250:14- 252:2. When asked why the agreement was not in the form of a written contract, Petitioner testified:

> "You know, we never put it in writing because, number one, we trusted each other. We were in love with each other. We were living together. We were sleeping together; and, you know, it just never occurred to me like, oh, I better put this in writing. You know, I am promising to stay with you and care for you for the rest of my life, and she is making the same promise. And we were making this agreement because we really, really loved each other." 1/4/16 R.T. 252:6-13.

While cross examining Stewart, Taylor's counsel spent a lot of time mostly going

over documents from CP070464 and FL070587 while Petitioner was testifying, over multiple objections by Stewart's counsel. 1/5/16 R.T. 300:16-339:15.

The Interspousal transfer deed was recorded the day after Patricia died, in accordance with the instructions the Stewarts gave Mr. Lamport (a Legal Document Assistant) when they signed and delivered the deed in his office. 1/5/16 R.T. 400:16-18.

James Taylor testified that he still lives at the Stewart ranch. 1/5/16 R.T. 419:23-420:24. He testified that he still has possession of decedent's unburied cremains. 1/5/15 R.T. 422:8-17. Taylor initially claimed under oath to have witnessed Petitioner physically and emotionally abuse Decedent. 1/6/16 R.T. 488:21-24. He did not describe any specific act of abuse and did not report it to anyone, despite his admission that he was a mandated reporter. 1/6/16 R.T. 489:12-22. Taylor testified that Patricia told him she was being abused by Petitioner. 1/6/16/ R.T. 502:8-9. Taylor later admitted that he never in fact witnessed any physical abuse of Decedent by Petitioner. 1/6/16 R.T. 519:3-5. Taylor characterized what he had called "emotional abuse" or "verbal abuse" as "arguments", and testified that they were something he thought should not be reported to APS or any other agency. 1/6/16 R.T. 489:3-14. That self-serving testimony by Taylor was the only scintilla of evidence that Petitioner ever mistreated Decedent.

Patricia's sister Deborah Lean testified that she was a graduate of Harvard University and U.C. Davis Medical School. 1/6/16 R.T. 537:11-18. She testified that Patricia had bipolar disorder and a personality disorder. 1/6/16 R.T. 538:20-16. She described Patricia's rapid cycling bipolar disorder. 1/6/16 R.T. 539:8-19; 542:28-545:25. Deborah testified that she never observed Petitioner physically or verbally abuse

Decedent. 1/6/16 R.T. 549:16-550:3. She testified that Decedent never told her that John ever physically attacked Decedent. 1/6/16 R.T. 551:7-10. She testified that Patricia never told her that John had ever sexually abused her. 1/6/16 R.T. 561:15-18. She testified that Taylor never notified her of any of the times Decedent was hospitalized. 1/6/16 R.T. 551:11-27. She testified that Taylor prevented her from speaking with Decedent alone. 1/6/16 R.T. 561:19-562:20. She testified that Decedent admitted that she and Taylor had been having sex. 1/6/16 R.T. 563:3-14.

Deborah testified that Decedent had described the terms of the partnership agreement between Decedent and Stewart on many occasions, including times before Petitioner and Decedent moved to the ranch. 1/6/16 R.T. 552:24-555:19; 575:15-22:

"Q Okay. So the -- so when -- before they actually purchased the property, Patricia specifically told you she intended to dispose -- to give it to John after she died?
A Whoever would -- yes.
Q Whoever would --
A It wasn't clear who would die first. They were partners, and they had this property and animals and working vineyard and --" 1/6/16 R.T. 575:15-22.

Counsel for the administrator asked Deborah Lean:

"Q After she had the property, you went to visit her at Crooked Prairie Road; is that correct?
A Yes.
Q And did -- at some point you talked to her about a plan she had to dispose of the property after death?
A Okay.
Q Do you recall that?
A Yes.
Q Do you recall that conversation?
A Yes.
Q Do you recall that conversation in some detail?
A Yes.
Q Okay. Where were you when the conversation took place?

A Okay. We had just had breakfast. John had made breakfast, and my partner -- at the time we weren't married -- and my partner and I were there, and Patty (*sic*) was there, and she was -- we were kind of in the living room area, and Patty (*sic*) was kind of lying down, and John was explaining the Marvin agreement and what that means. He was explaining it kind of to Susan and me, and Patty (*sic*) was listening and agreeing with the things he was saying. And then when she got to the -- when he got to the end of what the agreement was, Patty (*sic*) said "yes, and we -- whoever survives the other has to stay on the property until our last animal dies". 1/6/16 R.T. 576:3-28.

"Q Did she tell you she was purchasing the property in her own name as a single woman?
A She did not say that. She said she was buying the property for John because it has always been his dream to have a vineyard, and she wanted him to stay home with her and not go to work. Be with her." 1/6/16 R.T. 578:16-21.

Deborah testified that Petitioner took care of Decedent from 1992 onwards. 1/6/16/ R.T. 548:3-549:14.

The next witness was Deborah Lean's spouse, Susan Glowes, a licensed clinical social worker who had taught about mental health issues at U.C. Davis Medical Center and Sacramento State University, after which she worked for Kaiser Medical and had a private practice. 1/6/16 R.T. 601:7-602:5. She testified that she had treated over 500 patients with bipolar disorder. 1/6/16/ R.T. 603:4-8. She knew Decedent had bipolar disorder and a personality disorder, which she characterized as "more than likely borderline personality disorder". 1/6/16 R.T. 609:9-12.

Ms. Glowes testified that Decedent did not complain to her that Petitioner had physically or verbally or sexually abused her or raped her. 5/6/16 R.T. 606:16-607:16. She also testified that Decedent had admitted to her that she and Petitioner did in fact make the agreement alleged in the complaint in this action:

"A Patty (*sic*) said on a number of occasions -- trying not cough into the microphone -- that there was an agreement between the two of them that

essentially Patty (*sic*) had inherited some money, she would buy that property and what would happen is that they would live there together, John would own that property as well. He agreed to not continue to practice law and to live there on the property with her -- thank you so much -- and be there with her, and that they were going to live there as a couple forever. And if one of them died, the other would maintain that residence and keep all of their animals.
Q She said this to you personally?
A Yes.
Q On more than one occasion?
A Patty (*sic*) was a little redundant sometimes, so I heard that many times."
1/6/16 R.T. 608:2-17.

Ms. Glowes confirmed the agreement was made prior to the marriage. 1/6/16 R.T. 610:3-13.

Space does not allow Petitioner to quote from the testimony of all of his witnesses, but they all testified consistently with the testimony quoted above.

The jury was instructed and given a special verdict form. A148501, C.T. 1857-1859. The verdict was filed on January 15, 2016. C.T. 1857-1859. The jury found by clear and convincing evidence that John and Patricia entered into a contract that was sufficiently definite and certain to be enforced, that the contract was just and reasonable, and was supported by adequate consideration, but failed to make any findings as to whether either party had performed or breached the contract. A148501 C.T. 1857-1859. A judgment (Appendix B) based on that verdict was filed on May 5, 2016. A148501, C.T. 2133-2138.

REASONS FOR GRANTING THE PETITION

1

DUE PROCESS DOES NOT ALLOW THE WHOLESALE ADMISSION OF HEARSAY UNDER THE GUISE OF JUDICIAL NOTICE

The wholesale admission of the objected to prejudicial hearsay in this case created a structural defect that deprived Petitioner of a fair trial, which can never be a harmless error and requires reversal. *United States v. Gonzalez-Lopez*, 548 U. S. 140 (2006), at 141. "A fair hearing is a requisite of due process in both civil and criminal cases; hence, its denial is an act in excess of jurisdiction (citation) and reversible error per se." 9 Witkin, California Procedure (5th), Appeal § 456. "A judgment rendered in violation of due process is void". *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 291.

As held in *Queen v. Hepburn*, 11 U.S. 290 (1813), at 295-296:

> "These several opinions of the Court depend on one general principle. The decision of which determines them all. It is this: *That hearsay evidence* is incompetent to establish any *specific* fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge."
> ///
> "It was very justly observed by a great judge[8] that 'all questions upon the rules of evidence are of vast importance to all orders and degrees of men: our lives, our liberty, and our property are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity and the good sense in which they are founded.'
> [¶] One of these rules is, that 'hearsay' evidence is in its own nature inadmissible. That this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and

[8] Chief Justice Marshall was quoting from Lord Kenyon, C.J, in *Rex v. Eriswell*, 3 Term Reports 707, (1773), at 721. The Eriswell case is posted on line starting at page 386 of https://books.google.com/books?id=ZGRGAAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible." (Emphasis added.)

While not using the words, "due process", *Queen* clearly indicates that a judgment based on the admission of hearsay would be a violation of a party's right to due process of law. That holding was stated more clearly in *Pouhova v. Holder*, 726 F.3d 1007 (7th Cir. 2013), at 1016, fn. 7. As stated in *United States v. Aguiar*, 975 F.2d. 45, (2d Cir. 1992), at 47: "We may assume that the admission of facially unreliable hearsay would raise a due process issue". Petitioner first raised the federal due process issue by filing a group of motions in limine to exclude hearsay. A148501 C.T. 1270-1274. He reiterated the hearsay objections repeatedly in the trial court, e.g., 12/28/15 R.T. 61:26-62:8; 1/4/15 R.T. 278:28-281:1; 1/5/16 R.T. 11-14; 1/6/16 R.T. 596:14-26.

At 1/4/15 R.T. 281:22-24 Petitioner's counsel objected to Exhibit W as follows: "I object, your Honor, for all of the reasons we had before in the motion. It is hearsay, and it violates Mr. Stewart's due process rights". Petitioner clearly raised the due process objection in the trial court, and repeated the argument in the Court of Appeal that the admission of the hearsay statements deprived him of a fair trial. AOB 26 *et seq.*, 81 *et seq.* and *passim*. The Court of Appeal simply ignored those arguments and did not even mention either hearsay nor due process in its opinion.[9]

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[9] The Court of Appeal exhibited palpable hostility to Petitioner. The opinion below states, in footnote 11, "In 2007, Patricia was granted a three-year restraining order against Stewart. Over Stewart's counsel's objections, the trial court admitted the judge's findings in the restraining order proceeding, which include allegations of Stewart's abuse." The Court of Appeal failed to note that that restraining order was ordered vacated as void because it was entered in violation of Stewart's right to due process of law, and that action (CP070464) was dismissed. (A148501, C.T. 1424-1429).. The Court of Appeal, at 33, attempted to distinguish this case from *Monarco*

Petitioner again raised the issue of the hearsay violating his right to due process of law in the California Supreme Court in his petition for review, filed May 31, 2019, at pages 8 and 21-24. That petition was denied without opinion.

The ruling "that any documents which the Court takes judicial notice of, of course, are admissible", is not correct. *Day v. Sharp*, 50 Cal.App.3d .904, 914 (1975) held:

> "There exists a mistaken notion that this means taking judicial notice of the existence of facts asserted in every document of a court file, including pleadings and affidavits. However, a court cannot take judicial notice of hearsay allegations as being true, just because they are part of a court record or file."

The federal courts have repeatedly reiterated that rule.

> "While a court may take judicial notice of a judicial or administrative proceeding which has a 'direct relation to the matters at issue,' a court can only take judicial notice of the *existence* of those matters of public record (the existence of a motion or of representations having been made therein) but not of the *veracity* of the arguments and disputed facts contained therein."
> "[¶] While the authenticity and existence of a particular order, motion, pleading or judicial proceeding, which is a matter of public record, is judicially noticeable, veracity and validity of its contents (the underlying arguments made by the parties, disputed facts, and conclusions of applicable facts or law) are not." *United States v. Southern Cal. Edison Co.*, 300 F. Supp. 2d 964, 974 (2004).

As stated in *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (2001):

> "[W]hen a court takes judicial notice of another court's opinion, it may do so 'not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity.' *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd.*, 181 F.3d 410, 427-27 (3rd Cir. 1999)."

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v. Lo Greco, 35 Cal.2d 62, (1950) by stating that Petitioner "received much in return" for his agreement with Patricia. That fact is not relevant under *Monarco*; what is relevant is that he did not receive what he was promised by Patricia, and .The facts establish unconscionable injury as a matter of law.. *Estate of Brenzikofer*, 49 Cal. App. 4th 1461, (1996), at 1467.

As the court stated at page 413 of the opinion in *In Re Harmony Holdings, LLC*, 393 B.R. 409 (Bankr. D.S.C. 2008):

> " Judge Russell further explains the subtleties of taking judicial notice regarding documents filed with the Court, stating,, [¶] There exists a mistaken notion that it means taking judicial notice of the truth of facts asserted in every document in a court file, including pleadings and affidavits. However, a court may not take judicial notice of hearsay allegations as being true merely because they are part of a court record or file. It is difficult to understand why the filing of a document with a court should magically result in the contents of the document attaining a sufficient degree of reliability to overcome evidentiary objections such as hearsay to its admissibility in a trial before a bankruptcy judge."

Particularly relevant is the observation in *Queen v. Hepburn*, 11 U.S. 290 (1813), at 296: "Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, and the frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible."

Despite the fact that the jury found that the contract was made as alleged by Petitioner, the jury made no findings as to breach because of the way the verdict form was written and because the jury decided that Petitioner was not unconscionably injured and the Decedent was not unjustly enriched by the fact that Petitioner received no compensation for his years of caring for Decedent and the ranch, and not working outside the ranch and not practicing law, with the result that he was unable to accumulate any substantial retirement benefits from Social Security.

The court in *Porporato v. Devincenzi* 261 Cal.App.2d 670, (1968), at 673 reversed because Ms. Devincenzi did not receive what she was promised, and suffered unconscionable injury because she gave up all other opportunities including the chance to

earn a retirement benefit from Social Security or acquire any savings due to the promises John Porporato insisted upon.

Patricia required Petitioner to give up his law practice and pool his assets with hers. He did so, and it is clearly an unconscionable injury for him to be left landless and homeless, deprived of the right to live in the house he paid for so he and Patricia could live out their days in comfort and security.

The evidence in this case established both unconscionable injury and unjust enrichment as a matter of law, and the jury's findings to the contrary were unsupported by the evidence, and probably resulted from bad instructions and the improper admission of the multitude of inadmissible hearsay contained in documents claiming that Petitioner had been found guilty of abusing Patricia and that she had been awarded the ranch in the dissolution action. The dissolution action had no effect on the Marvin type agreement, which remained enforceable after the marriage. *Watkins v. Watkins* 143 Cal.App.3d 651, 653. (1983) at 653; *In re Marriage of Stitt* 147 Cal.App.3d 579 (1983), at 584..

The dissolution court has no jurisdiction over property that had been acquired pursuant to a Marvin type agreement. *Marvin v. Marvin* 18 Cal. 3d 660 (1976), at 665; *In re Marriage of Johnson* (1983) 143 Cal.App.3d 57 (1983), at 63; *Kroopf v. Guffey* 183 Cal.App.3d 1351 (1986), at 1357-1358.

Admission of the enormous quantities of hearsay was grossly improper, but perhaps the most illegal and prejudicial of the hearsay was the decision that had been ordered vacated in CP070464, Exhibit W. The request for order form in that action (Exhibit X) was almost as bad, but W was worse because it carried the imprimatur of the

prestige of the Court. So did the Court decisions and opinions admitted as Exhibits C, D, F, H and I. A148501 C.T. 2252-2264, 2266-2276,2347-2372, 2376 and 2377-2382.

Petitioner objected that Exhibit W was hearsay and invalid because it had been ordered vacated as void and the CP070464 action had been dismissed (A148501 C.T. 1424-1429).. Petitioner objected that it was misconduct[10] for counsel to offer Exhibit W, a decision that had been overruled, at C.T. 1424-1427. 1/4/16 R.T. 275:14-277:13. The lower court's response to that objection was, "THE COURT: Excuse me. That is not something for you to say." 1/4/16 R.T. 277:14-15.

Despite these and additional objections, the lower court gave Exhibit W to the jury, and to exacerbate the damage, allowed Taylor's counsel to argue to the jury that a Court has found Petitioner guilty of sexually and otherwise abusing Patricia. As stated in *Neumann v. Bishop* 59 Cal.App.3d 451, (1976), at 485, "We, therefore, conclude that it is improper and misconduct for counsel to argue that his case or some aspect thereof has judicial approval." That is exactly what counsel did when she argued, "After hearing testimony and considering evidence presented during a five day hearing in November 2007, Judge Neville made findings that John Stewart subjected Patricia to domestic violence, to sexual abuse, and to medical neglect. Remember the judge's findings <u>are conclusive evidence</u> that abuse occurred". 1/8/16 R.T. 32:9-14. Counsel committed the same type of misconduct when she told the jury, "We don't need to present evidence.

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[10] Former (Rule 5-200(D) of the California Rules of Professional Conduct: "" In presenting a matter to a tribunal, a member: [ ] (D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional".

The Court already decided that Mr. Stewart abused his wife. The Court already considered that evidence and found the allegations true." 1/8/16 R.T. 32:21-24. Rolff's counsel made the same argument during his closing argument, 1/8/16 R.T. 36:12-38:25.

That argument was improper for multiple reasons and, as relevant here, because it deprived Stewart of a fair trial because the admission of such hearsay must have had some effect on the jury. At a minimum, it was counsel's intent for it to have an effect on the jury.

Exhibit X, the request for order form in CP070464 was also inadmissible hearsay and such a document is so inherently prejudicial that the court in *People v. Pantoja* 122 Cal.App.4th 1 (2004) reversed a murder conviction because of the admission of the exact same form document, and that court did so solely based on the hearsay rule and not on *Crawford v. Washington* 541 U.S. 36, (2004), see *Pantoja, supra,* 122 Cal.App.4th, at 8-15.

The admission of so much inadmissible hearsay tainted the trial and resulted in an unfair trial, in violation of Petitioner's federal right to due process of law. This structural error requires application of the rule of reversal per se. *U.S. v. Gonzalez-Lopez, supra.*

2

THE RULING THAT THE ASSIGNMENT BY PATRICIA'S SOLE INTESTATE HEIR TRANSFERRED NO PROPERTY RIGHTS TO PETITIONER DIRECTLY CONFLICTS WITH THE HOLDING IN *DRYE V. UNITED STATES*, 528 U.S. 49, 60 (1999)

The 14th Amendment declares that Petitioner cannot be deprived of property without due process of law, a fundamental right traceable to Clause 29 of the Magna

Carta of 1215, kept in the National Archives:

> "No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny of (*sic*) delay right or justice."[11]

The right of an heir to inherit is a property right and an assignment of that right is to be enforced by the courts. *Drye v. United States*, 528 U.S. 49, (1999), at 60 .

On February 26, 2016, the Assigned Judge ruled that the Assignment (A148501 C.T. 1485-1486) executed on December 16, 2014 by Deborah Lean was valid. 3/23/16 R.T. 43:21; C.T. 1153. The Court stated, "The assignment is valid, but that does not give Deborah or you the right to be involved in this probate will contest at this time." 3/23/16 R.T. 46:13-16. Denying a party the right to take part in a trial violates the right to due process of law. *Aulisio v. Bancroft*, 230 Cal.App.4th 1516 (2014), at 1528.

According to *Estate of Clark*, 94 Cal.App. 453, (1928), at 460: "The right of an heir to transfer his inheritance, even though there is a will or purported will in existence, is recognized by our courts. At the instant of his son's death Major Clark had a property right which he could assign or transfer or surrender for a consideration acceptable to him, and also the statutory right, which of itself is a property right, to contest his son's will." Accord, *Estate of Baker,* 170 Cal. 578, (1915), at 587-588; *Estate of Field*, 38 Cal.2d 151, (1951), at 154.

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[11] https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html

Such assignments are presumed to be valid (*Estate of Lynch* (1978) 83 Cal.App.3d 296, (1978)) and the Assigned Judge ruled that this assignment was valid. 3/23/16 R.T. 43:21; C.T. 1153.

The order that such an assignment can be valid but not confer the right to contest a will is clearly a void order in direct conflict with the controlling precedents previously cited by Appellant, e.g., *Estate of Clark*, 94 Cal.App. 453, (1928), at 460; *Estate of Baker,* 170 Cal. 578, (1915), at 587-588; *Estate of Field*, 38 Cal.2d 151, (1951), at 154. Appellant made this argument to the trial court more than once, including in the document styled "Notice Of Motion And Motion For Reconsideration Of Rulings And To Vacate Void Orders; Declaration Of John Stewart In Support Of Motions; Memorandum", filed April 1, 2016. A148501 C.T. 2024. The Assigned Judge denied that motion on May 2, 2016. A148501 C.T. 2130.

Judge Reinholtsen's January 2, 2014 order recites that Appellant is "a person interested" in the Estate. A148501 C.T. 912:1. That order was made over a year after the dissolution in A124777 became final under Family Code § 2341(a) on October 1, 2012 when the U.S. Supreme Court denied the petition for certiorari in *Stewart v. Parris, Case* No. 12-5475, so Judge Reinholtsen had to have determined that Appellant had standing other than as a surviving spouse, since his status as a surviving spouse was terminated by the denial of the petition for writ of certiorari. The Assigned Judge disregarded that January 2, 2014 order and asserted that a "person interested in the estate" is not the same as an "interested person". 12/28/15 R.T. 70:5-7. This supposed distinction was and remains confusing to Petitioner. A148501 12/28/15 R.T. 84:8-16; 3/23/16 R.T. 47:21-

47:12. Petitioner believes this distinction is meaningless, but the Assigned Judge relied on it to claim that Stewart had no standing to contest the will favoring Taylor and despite the existence of the assignment that the Assigned Judge ruled was valid. Petitioner's above-cited protestations that the assignment was valid and enforceable sufficed to raise the objection that he was being deprived of property without due process of law in violation of the 14th Amendment.

This maneuver, aside from depriving Stewart of the sacred right to property, deprived him of the right to contest the deathbed will favoring the nurse. After Stewart had been denied any right to participate in what the lower court was still calling a will contest (despite the fact that the only contestant had been found to lack standing), County Counsel (at a sham hearing[12] from which Stewart was excluded) took it upon herself to not offer into evidence as an Exhibit the declaration she had demanded be prepared by Dr. Guetzkow, one of Stewart's expert witnesses and a treating physician of Decedent during her final hospitalization. She did this because she unilaterally decided that "the doctor's references to the medical records are not consistent with what I see in the medical records." 3/24/16 R.T. 8:4-6. County Counsel suppressed this evidence from the lower court by failing to ask that her truncated version of Dr. Guetzkow's declaration, Exhibit B (A148396, C.T. 1394-1397), be admitted into evidence at the March 24, 2016

[12] A sham proceeding is one in which interested parties are denied the opportunity to argue or present evidence. *Voices of Wetlands v. State Water Resources Control Board* 52 Cal.4th 499, (2011), at 528. A sham proceeding is absolutely void. *Pierce v. Superior Court* (1934) 1 Cal.2d 759, (1934), at 770 (conc. op).

hearing from which Petitioner was excluded. 3/23/16 R.T 49:23-50:3. A complete copy of Dr. Guetzkow's declaration was later filed by Petitioner. A148501 C.T. 2037-2043.

Dr. Guetzkow's declaration of March 23, 2016 avers that on the date she signed the will favoring nurse Taylor, Decedent "was not competent to make legal decisions as will and testament nor bequests and financial decisions, and I can say this with reasonable medical certainty. [¶] Neither then, nor during the month prior was she competent, when she had been so ill and so helpless to help herself, nor to even recognize the seriousness of her bloody diarrhea and developing illness, and to then ask for and get help. She was not able to make medical decisions." A148501 C.T. 2038 ¶¶ 2-3. (Emphasis added.)

Dr. Guetzkow's declaration also stated that he had reviewed Decedent's medical records and stated that "She had remained at home with 12 days of bloody diarrhea" before Taylor took her to a physician. A148501 C.T. 2037 ¶ 4.

Under California law, when a death results from the neglect of a duty to care by a person with a legal obligation to care for the decedent, it is second degree murder. *People v. Burden*, 72 Cal.App.3d 603 (1977), at 616. The ruling that Petitioner lacked standing to contest the will favoring Taylor deprived Stewart of the right to present evidence that Taylor was disqualified as an heir, because he caused the death of Patricia, because Patricia lacked testamentary capacity on the date she executed the will on her deathbed, and for many other reasons, including the fact that the so-called Certificate of Independent Review appended to the will favoring Taylor ((A148501-1 C.T. 2671) was invalid because the attorney who signed it had previously advised Stewart about related

issues so that attorney was not "independent" due to that conflict of interest. Stewart attested to the details of that conflict of interest in a document filed January 24, 2014 at A148501, C.T. 948-959. But he was never allowed to testify about the conflict of interest nor to cross examine the attorney who signed the certificate of independent review who was never asked about his admission that he had discussed these cases with Stewart, who had given him "a lot of information" (A148501 C.T. 957 ¶ 2). Stewart was not allowed to call any of the witnesses who witnessed that attorney make that admission.

"Denying a party the right to testify or to offer evidence is reversible per se." *Kelly v. New West Federal Savings*, 49 Cal.App.4th 659, (1996), at 677.

The Court of Appeal, at pages 12-17, glossed over the issue of the validity of the assignment by asserting that Stewart could not inherit under the will naming him as beneficiary because of the later will naming Taylor. The Court of Appeal did not even mention the intervening will naming Deborah Lean as beneficiary, and did not mention the fact the Deborah was Patricia's sole intestate heir. The Court of Appeal denied that the assignment by Deborah gave standing to Stewart because she did not formally join in his contest of the will favoring Taylor within the statutory time frame, but failed to mention the cases cited by Petitioner that a person such as Deborah is allowed to ignore the statutory time frame as long as someone else filed a contest within the allotted time. *In re Estate of Butzow*, 21 Cal.App.2d 96, (1937), at 98; *In re Estate of Harootenian*, 38 Cal.2d 242, (1951), at 246.

The assignment was executed by Deborah Lean on December 16, 2014 but Stewart's will contest was not terminated until December 28, 2015. A148396, C.T.

1082. Because on the date she executed the assignment, Deborah still had the right to join Stewart's will contest, she also undoubtedly had the right to assign her rights as sole intestate heir to Stewart, including the right to contest the will favoring Taylor, but the lower court and the Court of Appeal simply ignored that fact,

CONCLUSION

"The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand." *Webber v. Webber*, 33 Cal.2d 153, (1948), at 155.

"A fair hearing is a requisite of due process in both civil and criminal cases; hence, its denial is an act in excess of jurisdiction (citation) and reversible error per se." 9 Witkin, California Procedure (4th ed. 1996) Appeal, § 449, p. 497.

Whether a State can deprive a person of any property without due process of law is an important federal question. Whether a State can deprive a person the right to due process of law by subverting hundreds of years of settled law against the use of hearsay by claiming that items that are judicially noticed are not subject to the rule against hearsay is also an important federal question. No resident of California can place any faith in the State's court system if judges are allowed to conduct unfair trials based on the canard that anything of which a court takes judicial notice is automatically admissible.

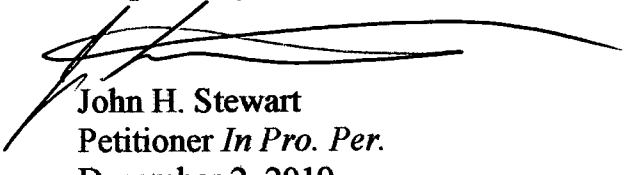
For example, a Court could take judicial notice of the document contained in Appendix F if it was properly offered (and mot merely downloaded by clicking "Legislation Details (With Text)" from https://humboldt.legistar.com/LegislationDetail.aspx?ID=4073347&GUID=C6D04754-

260D-4BA2-83DB-EF4AACBF03C0&Options=&Search=, but that would prove only that Rolff obtained permission from the County of Humboldt to grow 7800 square feet of cannabis at the Stewart ranch, but not as proof that he is actually doing so. We do not expect jurors to know what parts of a judicially noticed document are admissible, so we do not give such documents to jurors. Counsel has found no case from any jurisdiction in which jurors were actually given copies of documents judicially noticed by a court.

We do not give jurors appellate or trial court opinions, judgments or decisions as evidence in the hope that the jurors can decipher documents the interpretation of which is subject to debate by trained attorneys and judges, and we do not give jurors pleadings or affidavits as evidence, yet all of those items were given to the jury in this case. One important function of the Supreme Court is to school the lower courts as to their limitations imposed by the constitutional guarantee of due process of law, and, as this petition demonstrates, the California courts that handled these actions are sorely in need of such schooling.

Petitioner respectfully prays that this Honorable Court will grant this petition for writ of certiorari as to either or both of the questions presented.

Respectfully submitted,



John H. Stewart
Petitioner *In Pro. Per.*
December 2, 2019