

Supreme Court, U.S.
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No. 20-413

In The
Supreme Court of the United States

Jozlyn Thomas,

Petitioner,

v.

James Scott Blevins,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of California

PETITION FOR A WRIT OF CERTIORARI

Jozlyn Thomas
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In Pro Per

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SUPREME COURT, U.S.

I. QUESTION PRESENTED

Whether the Fifth and Fourteenth Amendments to the United States Constitution serves to void the Order of the trial court which approved and settled the amended account and report of trustee of a family trust as well as approving the agreement and distribution of the trust estate between the trustee and a beneficiary where Petitioner, as a beneficiary of the trust, was not served with required notices of the litigation.

PRIOR LITIGATION

List of Parties: Indicated on Cover Page.

List of Proceedings:

1. Stanislaus County Superior Court
Case No. 428536

NOTICE OF PETITION AND PETITION TO
REOPEN ESTATE AND VACATE AND SET ASIDE
VOID ORDER APPROVING AND SETTling
AMENDED ACCOUNT AND REPORT OF
TRUSTEE; ORDER APPROVING AGREEMENT
BETWEEN TRUSTEE AND DAWN MORIN;
ORDER APPROVING DISTRIBUTION PLAN AND
A LLOWING PAYMENT OF TRUSTEE'S FEES.

Date of Entry of Ruling: October 1, 2018

2. California Fifth District Court of Appeal
Case No. F078333

APPEAL FROM A FINAL ORDER DENYING
APPELLANT'S MOTION TO VACATE AND
SET ASIDE FINAL RULING THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF
STANISLAUS

Date of Entry of Ruling: February 6, 2020

3. California Supreme Court
Case No. S261303

PRTITION FOR REVIEW

Date of Entry of Ruling: April 22, 2020

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I. PETITION FOR WRIT OF CERTIORARI

Jozlyn Thomas respectfully petitions for a writ of certiorari to review the decision of the California Supreme Court of to deny Ms. Thomas' Appeals for the California Fifth District Court of Appeals in this case.

II. STATEMENT OF JURISDICTION

Ms. Thomas Petition for Review to the California Supreme Court was denied on April 22, 2020. Ms. Thomas invokes this Court's jurisdiction under 28 U.S.C. § 1257 and under the United States Supreme Court Rules of Court, Rule 11, having timely filed this Petition for a Writ of Certiorari within extended time of one hundred fifty days of the California Supreme Court's ruling.

III. NECESSITY FOR REVIEW

A grant of review preventing the demise of this pending petition will permit ultimate review of issues by the California Supreme Court necessary to settle important questions of interplay between state statutory law and federal constitutional law. A ruling by this court may help to determine the required burdens of law and fact necessary to prevail in cases where the state statutory law is in conflict with the Constitution, more specifically, the Fifth and Fourteenth Amendments to the Constitution. The Appellate Court extensively reviewed the application of *County of San Diego v. Gorham* (2010) [186 Cal.App.4th 1215] ("*Gorham*") App. B at 2a which discussed this issue, and found that the law expressed by the *Gorham* court had continued general application, but distinguished itself from the instant case. App. B at 18a This Petition

specifically seeks a ruling that the impact of the Due Process Clause of the Fourteenth Amendment cannot be inhibited by a state statute of limitations.

IV. U.S. CONSTITUTIONAL PROVISIONS AND CALIFORNIA STATE STATUTES

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV section 1:

Section 1.

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.

California Code of Civil Procedure § 473:

473.

(a)

(1) The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

(2) When it appears to the satisfaction of the court that the amendment renders it necessary, the court may postpone the trial, and may, when the postponement will by the amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of any costs as may be just.

(b) The court may, upon any terms as may be just relieve a party or his or her legal representative

from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. However, in the case of a judgment, dismissal, order, or other proceeding determining the ownership or right to possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, dismissal, order, or other proceeding has been taken, and upon his or her attorney of record, if any, notifying that party and his or her attorney of record, if any, that the order, judgment, dismissal, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of the notice, then the application shall be made within 90 days after service of the notice upon the defaulting party or his or her attorney of record, if any, whichever service shall be later. No affidavit or declaration of merits shall be required of the moving party. Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper

(c)

(1) Whenever the court grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may do any of the following:

(A) Impose a penalty of no greater than one thousand dollars (\$1,000) upon an offending attorney or party.

(B) Direct that an offending attorney pay an amount no greater than one thousand dollars (\$1,000) to the State Bar Client Security Fund.

(C) Grant other relief as is appropriate.

(2) However, where the court grants relief from a default or default judgment pursuant to this section based upon the affidavit of the defaulting party's attorney attesting to the attorney's mistake, inadvertence, surprise, or neglect, the relief shall not be made conditional upon the attorney's payment of compensatory legal fees or costs or monetary penalties imposed by the court or upon compliance with other sanctions ordered by the court.

(d) The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion

of either party after notice to the other party, set aside any void judgment or order.

California Code of Civil Procedure § 473.5:

473.5.

- (a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
- (b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
- (c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a)

and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

V. STATEMENT OF FACTS

a. Procedural Facts:

- January 18, 2002: Giles Revocable Trust executed by Charles Giles and Bobette (Blevins) Giles. App. B at 2a – 10a.
- April 3, 2003: Charles Giles' dies.
- Dec.31, 2004: Bobette Giles, dies.
- July 24, 2007: Dawn Morin, a 40% beneficiary of the Family and Marital Trusts, filed a Petition for Declaratory Relief in the Federal Court which was later dismissed for lack of subject matter jurisdiction.
- April 8, 2008: Dawn Morin files the initial ("safe harbor") Petition for Declaratory Relief with the Stanislaus County Superior Court.
- April 10, 2008: Trustee Blevins filed a Petition to Approve and Confirm Account and Report of Trustee; Approval of

Proposed Distribution and Payment of
Trustee's Fees; Consent of Trustee of
Beneficiaries' Trust

- May 13, 2008: Pursuant to a stipulation between Blevins and Morin, the Court ordered Dawn Morin's case consolidated with Trustee Blevin's case.
- June 11, 2008: Dawn Morin filed the Petition to Compel Performance of Respondent's Duties as Trustee or in the Alternative Remove the Trustee Pursuant to Probate Code §§ 17200 and 16420
- March 2, 2009: At the Trial Settlement Conference of the consolidated cases, the parties entered into a settlement agreement and the Court issued its Minute Order Incorporating the settlement agreement pursuant thereto.
- March 25, 2009: James Scott Blevins as Trustee to The Administrative Trust, The Survivor's Trust, The Family Trust and The Marital Trust filed the Trustee's Amended Petition.
- April 29, 2009: Petitioner Dawn Morin filed a Request for Dismissal with prejudice of her case.

May 5, 2009: The Court issued an Order pursuant to the settlement agreement which was entered on May 6, 2009.

May 6, 2009: Petitioner Dawn Morin filed a Notice of Entry of Dismissal and Proof of Service.

March 26, 2018: Appellant filed her Petition to Vacate and Set Aside the May 5, 2009, Order.

May 4, 2018: Opposition to Appellant's Petition to Vacate and Set Aside filed.

Nov. 1, 2018: Appellant filed Notice of Appeal.

February 6, 2020: California's Fifth District Court of Appeals entered its Opinion.

March 17, 2020: Filed Petition for Review with California Supreme Court,

April 22, 2020: California Supreme Court entered its Denial. App. B at 2a – 10a

b. Substantive Facts:

Petitioner Jozlyn Thomas (hereafter “Jozlyn” or “Petitioner”) was born on June 20, 2000. On or about 2006 Jozlyn was constructively abandoned in Wisconsin by her parents caused by their excessive drug use. In June 2006 when Jozlyn was 6 years old, the Racine County (Wisconsin) Human Services, took custody of Jozlyn. App. B at 2a – 10a

In that same year, Jozlyn's maternal grandparents, Daniel and Mary Thomas, stepped forward and filed for guardianship of the person and the estate of Jozlyn. Guardianship was granted by the Wisconsin Court, and until June 20, 2018, Dan and Mary Thomas raised Jozlyn until, on that date, she reached the age of majority.

On January 18, 2002, Charles L. Giles, Jozlyn's paternal grandfather and Bobette Giles, Jozlyn's step-grandmother created a revocable family trust entitled Giles Revocable Trust, (hereafter "Trust"). At the time, Charles had two sons from a former marriage; Charles W. Giles (deceased) and Joseph Giles (Jozlyn's father). Bobette had five (5) children from a former marriage; James Scott Blevins, William Blevins, Brent Blevins, Bryan Blevins and Kelly Bergman. Charles and Bobette were the initial trustees of the Trust created as a revocable inter vivos trust. Bobette's son, James, was designated as the successor trustee upon the death of the trustors, Charles and Bobette.

The Trust specifically provided for some of Charles L. Giles' grandchildren. They were Charles W. Giles, Jr., Anthony L. Giles, Michael Giles and Jozlyn.

Generally, the Trust assets, valued in the millions of dollars, were supposed to be placed into three different sub-trusts upon the death of the first spouse. It was Charles who died first on April 2, 2003.

Upon Charles' death a marital share trust was supposed to be created and funded to the extent of the federal marital estate tax exemption amount in order to reduce and/or eliminate taxes at the time of the surviving

spouse's death. Second, a family share trust was to be created, which would hold the "community property share" of the deceased spouse as well as the balance of that spouse's separate property (if any). Third, a "surviving spouse" trust was supposed to be created to hold the surviving spouse's share of the community property as well as that spouse's separate property (if any). The "surviving spouse" was to maintain control over all the "assets" in the surviving spouse trust and upon his or her death, those assets were to be equally divided between the surviving spouse's beneficiaries.

Trustor Charles died first, and this is what was supposed to happen but did not:

Immediately upon Charles' death, Stoney Dahlberg, a granddaughter of Charles L. Giles and daughter of Charles W. Giles, was to receive \$1,000. Dawn Morin, who Charles L. Giles treated as a daughter, but who was not, was to receive \$25,000, and "each living grandchild", including Jozlyn, was to receive \$25,000.

Upon Bobette's death on December 31, 2004, the following beneficiaries inheriting the balance of the marital share and family share sub-trusts were: Joseph Giles (\$50,000 conditional upon his refraining from the use of illicit drugs); 10% to the Boys & Girls Club of Manteca, 10% to St. Vincent de Paul's; and 10% to "each living grandchild". There were four (4) at the time of Bobette's death including Jozlyn. The "remainder" of the marital share and family share sub-trusts were left to Dawn Morin. Thus, Jozlyn was to inherit 10% of the remaining value of the marital share and family share sub-trusts, and Dawn

Morin would receive about 40% of the assets left in those two sub-trusts.

James Blevins, the successor trustee failed to administer the Trust until, finally, in June 2008, more than four (4) years after Bobette's death. Dawn Morin filed a declaratory relief action in Federal Court to secure a decision that her petition would not be deemed a "contest" of the trust's provisions which would invoke the "no contest clause" of the Trust. This federal action was dismissed. Dawn Morin then filed a petition seeking "information and an accounting" from James Blevins, the successor trustee. This petition also alleged that James Blevins was improperly attempting to sell trust property to his brother (another of Bobette's beneficiaries) at an inappropriate discount. Additionally, there were questions as to the delay in funding the sub-trusts, as well as questions concerning some transactions Bobette had undertaken during her lifetime (with regard to inappropriately distributing Trust asset money to her children), and the allocation to Respondent James Blevins of shares of stock in a trucking company, Mountain Valley Express ("MVE") owned by the Trust.

On April 10, 2008, trustee Blevins filed a "Petition to Approve and Confirm Account and Report of Trustee; Approval of Proposed Distribution and Payment of Trustee's Fees; Consent of Trustee of Beneficiaries' Trust."

On June 11, 2008, Dawn Morin filed a "Petition to Compel Performance of Respondent's Duties as Trustee or In the Alternative Remove the Trustee Pursuant to Probate Code §§ 17200 and 16420."

James Blevins as the trustee of the Trust objected to Dawn Morin's petition, offering "explanations" for each of the delayed but then challenged actions. After settlement negotiations, the parties reached an agreement in March 2009. Thereafter, on March 25, 2009, James filed an amended petition seeking approval of a distribution plan pursuant to which Dawn Morin received slightly less than her designated 40% of the two sub-trusts. Notably, pursuant to the plan, Petitioner also received less than 10% of the sub-trusts. App. B at 2a – 11a

On April 10, 2008, trustee James Blevins filed his verified "Petition to Approve and Confirm Account and Report of the Trustee; Approval of Proposed Distribution and Payment of Trustee's Fees; Consent of Trustee of Beneficiaries' Trust [Probate Code § 17200]". (Hereafter "Respondent's Petition to Approve. . .") App. F

On March 25, 2009, trustee Blevins filed a verified "Amended Petition to Approve and Confirm Account and Report of the Trustee; Petition to Approve Agreement Between Trustee and Dawn Morin; Approval of Distribution Plan and Payment of Trustee's Fees; [Probate Code § 17200]". ("Respondent's Amended Petition to Approve. . .") App. G at 88a.

It is important to note that Trustee Blevins declares on page 3, at ¶ 4., lines 2-10 (App. F at 88a) of Respondent's Petition to Approve. . . and again on page 3, at ¶ 4., lines 1-9 of Respondent's Amended Petition to Approve. . ., that \$25,000.00 had already been distributed to Jozlyn Thomas. App. G at 105a

This allegation was patently untrue, and Respondent admits the same when in his "Declaration of

James Scott Blevins in Support of Opposition to Petition to Reopen Estate Administration and to Vacate and Set Aside Order Approving and Settling Amended Account and Report of Trustee and Dawn Morin; Order Approving Agreement Between Trustee and Dawn Morin; Order Approving Distribution Plan and Allowing Payment of Trustee's Fees" he declares under penalty of perjury that the check sent to Dan and Mary Thomas as guardians of the estate of Jozlyn Thomas was part of the distribution required after Charles L. Giles' death. Yet, in his verified April 10, 2008 petition and his March 25, 2009, amended petition he declared to the court that this amount had already been paid.

It is further alleged in the same documents, Respondent's Verified Petition on p. 4, ¶ 4, at lines 14-15, and again in Respondent's Amended Verified Petition on p. 4, ¶ 4, at lines 6-7, the Respondent declares:

"At all time herein relevant, the above beneficiaries are adults. Below is a list of all beneficiaries and interested persons who are at all times herein mentioned adults, and their addresses: . . ." (Emphasis added.) App. F at 89a and App. G at 106a.

He then goes on to list the names and addresses of a group of beneficiaries/interested persons including Jozlyn herein as:

Jozlyn Thomas
25030 Sandhill Blvd., #4b2
Punta Gorda, FL 33983

This was not her address. The address as written is a vacant lot filled with brush and weeds. Further, the allegation that all the beneficiaries were adults was also false. At the time Respondent Trustee Blevins filed the petition Jozlyn was only 6 years old and was only 8 years old when Respondent's Verified Amended Petition was filed.

Respondent trustee Blevins actually knew both of the above allegations were false, yet, he was willing to lie and misrepresent facts to the court in order to push the settlement agreement through to allow the judge to approve the settlement agreement between the Respondent and Dawn Morin. It seems likely the trial court would not have approved the settlement agreement but for the lies.

On April 29, 2009, pursuant to the settlement agreement, Dawn Morin dismissed her petition for "information and an accounting" with prejudice.

Jozlyn did not receive notice of this litigation. The trial court found that service on Jozlyn was made by mail to two "incorrect" addresses. Respondent mailed numerous notices to Petitioner at the following two addresses: 25030 Sandhill Boulevard, #4b2, Punta Gorda, Florida 33983 and 25050 Sandhill Boulevard, #4b2, Punta Gorda, Florida 33983. Most were sent to the 25030 address which was a vacant lot. However, two notices were mailed to the 25050 address at which Jozlyn and her parents resided for a short period of time, June and July 2003, when Jozlyn was three (3) years old.

The trial court herein in its final ruling on Jozlyn's motion to vacate and set aside argued that the various

services of process at the 25050 address were "actually correct". Technically the trial court was correct in that in June and July 2003 when Jozlyn was three years old, she lived with her parents, who later separated.

It was unreasonable for Dawn Morin, the original petitioner and James Scott Blevins, the Trustee, to assume that the six year old Jozlyn still resided at the 25050 address when (1) the petitioner, Dawn Morin, and the trustee James Scott Blevins, knew that Jozlyn's father, Joseph Giles, was housed in the Florida state prison system, and he was served while in prison. He knew the correct address for Jozlyn; all they had to do was ask; (2) they should have served Joseph on behalf of Jozlyn if they had no knowledge of the Wisconsin guardianship; and (3) they served Jozlyn at two different addresses. (Basic reasoning would indicate that they had to know that one of the addresses was wrong.) This should have prompted further diligence on the part of Dawn Morin and James Scott Blevins' to exert further effort (such as asking Jozlyn's father for her address) to ascertain Jozlyn's accurate address. They did not do this. Instead, they continued to serve Jozlyn at the wrong address(es) having the impact of preventing Jozlyn from asserting her rights in the trial court proceedings.

As a result, neither Jozlyn nor her grandparents/guardians had actual knowledge or legal notice of the existence of the Trust, and it was not until 2009 when the wife of the Trustee, Dena Blevins, with very little trouble finding the number, telephoned the grandparents/guardians did they learn that the Trust, but not Dawn Morin's case, existed and Jozlyn was a beneficiary entitled to distribution of a portion of its assets.

Jozlyn turned 18 on June 20, 2018.

VI. ARGUMENT

On April 22, 2020, the California Supreme Court denied Petitioner's Petition for Review without comment. By implication its denial accepted California's Fifth District Court of Appeal's decision to deny Petitioner's challenge to the Stanislaus County's Superior Court's denial of Petitioner's Petition to Vacate and Reopen the Administration of the Giles Family Trust and approved the settlement agreement between beneficiary Dawn Morin and the trustee of the Giles Family Trust. Because, of the implication by the California that the Fifth District Court of Appeals was correct, this discussion restricts itself to whether the Fifth District decided Petitioner's Petition correctly

a. Violation of the Fifth and Fourteenth Due Process Clause Voids All Succeeding Court Determinations, Decisions and Orders.

In its Opinion, the Appellate Court first discussed CCP §473d and §473.5 which places a time limit of two (2) years within which a movant must move to set aside a void judgment. (Please see Opinion attached as Exhibit A at pp. 10 – 17.) It discussed the exceptions to the two year limit rule and how the instant case fails to meet the requirements of the discussed exception(s). The Appellate Court further discussed whether extrinsic fraud existed. (Please see Opinion attached as Exhibit A at pp. 13-17.) The Appellate Court found that (1) extrinsic fraud was not present, and (2) the Motion to Vacate was not timely.

Without admitting the legal validity of the Appellate Court findings on these two issues, this petition respectfully challenges the Appellate Court's application and ruling found in the case of *County of San Diego v. Gorham* (2010) [186 Cal.App.4th 1215] ("*Gorham*"). (Please see Opinion attached as Exhibit A at pp. 17-22.)

Petitioner in her Opening Brief and Reply filed with the Appellate Court argued that the Due Process Clause of the Constitution restricts state statutory limitations when an interested party was not served with process. (Please see Opening Brief at pp. 12-20.) Petitioner argued that complete failure of service on an interested party rendered the ensuing (default) judgment void as opposed to merely "voidable". Petitioner cited *County of San Diego v. Gorham* (2010) [186 Cal.App.4th 1215] and *Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd.* (2018) [24 Cal.App.5th 115; 233 Cal.Rptr.3d 814] (Reversed on separate issues.)

However, the Appellate Court addressed *County of San Diego v. Gorham*, supra, in depth and found that though the law expressed in *Gorham* to be current, *Gorham* was distinguishable from the instant case finding that the false proof of service at issue in *Gorham* was fraudulent and though the proof of service in the instant case was false, there had been no showing that the falsity was fraudulent. (Please see Opinion attached hereto as Exhibit A at pp. 17 - 22.)

The Appellate Court premised its ruling denying Petitioner's appeal on its interpretation of *Gorham*, supra, that, as interpreted, required the element of fraud to be

present to allow an appellate court to vacate a judgment based on lack of personal jurisdiction. The Appellate Court stated:

“In essence, *Gorham* concluded that where a fraudulent return of service results in a complete failure of service of process on the defendant whose rights were at stake, there is a fundamental lack of jurisdiction over that party and any resulting order or judgment against him or her is void and may be set aside at any time.” (Please see Opinion attached as Exhibit A, at p. 18.) (Emphasis added.)

In *Gorham*, it was shown that the process server falsified the proof of service and that the petitioner therein had been in prison at the time the process server claimed to have served him.

However, to find that fraud is a condition precedent to adjudicating that a judgment is void is a misreading of *Gorham*.

The facts in *Gorham* show that a paternity and child support summons and complaint were allegedly personally served on Gorham in 1998 at an address in San Diego. A default judgment was entered against him, and he was ordered to pay monthly child support, plus arrearages. In 2002, a County Department of Child Support Services worker informed Gorham of the existence of the default judgment. Later, Gorham discovered that the process server had falsified the proof of service of summons and complaint because Gorham had been incarcerated on the date of the purported service. Gorham moved to set aside the 1998 default judgment. The trial court denied the motion on the ground that since the invalidity was not apparent on the face of the record, the motion had to be

brought within recognized time periods, i.e., either the two-year outer limit adopted by analogy to Code of Civil Procedure section 473.5, or the shorter period set forth in Family Code section 3691, or if premised on extrinsic fraud then at least within a reasonable time after learning the facts. The trial court found that Gorham waited too long, and relief was denied. (*Gorham*, at pp. 1223-1224.) Gorham appealed.

The Appellate Court of the Fourth Appellate District reversed.

It held that:

1. A judgment is void for lack of fundamental jurisdiction of the person where there is no proper service on or appearance by a party to the proceedings;
2. Where the judgment is void, there is an entire absence of power by the court to hear or determine the case;
3. A void judgment is vulnerable to direct or collateral attack at any time;
4. Whether lack of jurisdiction appears on the face of the judgment or is shown by evidence outside of the record, in either case the judgment is for all purposes a nullity past, present and future;
5. All acts performed, including entry of judgments, under it and all claims flowing out

of it are void and are vulnerable to direct or collateral attack at any time;

6. Where a party establishes that he or she has not been served as mandated by the statutory scheme, no personal jurisdiction by the court will have been obtained and the resulting judgment will be void as violating fundamental due process;
7. When a judgment or order is obtained based on a false return of service, the court has the inherent power to set it aside, and a motion brought to do so may be made on such ground even though the statutory period has run.

Though the Gorham court made the above findings without the necessity of finding extrinsic fraud, it further discussed that where extrinsic fraud is found, fraudulent activity must be present. This, though, was a separate discussion to find another separate pathway to set aside a void judgment where extrinsic fraud is present. (Please *Trackman v. Kenney* 187 Cal.App.4th 175 (2010).) It is this separation that was not acknowledged and applied by the Appellate Court. The foremost thrust of the *Gorman* opinion was based on non-fraudulent facts which still might deprive a party of his or her due process rights.

- b. **The Appellate Court Was Mistaken When It Found, In Equity, That Petitioner Should Not Be Allowed To Set The Trial Court Decision Aside Because (1) Subsequent to discovery of the trial court case, she impliedly accepted trust disbursement funds and, further, (2) that reopening the case in the trial court setting aside**

its order approving the settlement agreement would impair another person's substantial interest of reliance on the judgment.'

However, the Appellate Court, indicated that even if the legal arguments failed an argument equity would still prevent vacating the trial court judgment. It stated that if the rules at law failed that the equitable rule that says '(1) the party seeking relief, after having had actual notice of the judgment, manifested an intention to treat the judgment as valid; and (2) granting the relief would impair another person's substantial interest of reliance on the judgment' would apply (Please see Opinion at p. 20 referencing Gorham, at p. 1229.)

However, the often quoted legal maxim still having legal impact says that 'he who seeks equity must do equity.' In other words, in all fairness, '[H]e who comes into equity must come with clean hands.' (*Keith G. v. Suzanne H.* (1998) 62 Cal.App.4th 853, 862 [72 Cal.Rptr.2d 525] citing *Garamendi v. Mission Ins. Co.* (1993) 15 Cal. App. 4th 1277, 1289 [19 Cal. Rptr. 2d 190], quoting 11 Witkin, Summary of Cal. Law (9th ed. 1990) Equity, § 8, p. 684.)

It is important to understand that at all times until 2018, Petitioner was a minor ward of Daniel and Mary Thomas, guardian/grandparents. They did not know or understand that the superior court case existed until 2017 though it was referred to in two letters from attorney Eric Nielsen. The appellate court indicated that the content of these letters were sufficient to put the grandparents on notice that the case existed.

Nevertheless, bad faith can be shown:

1. All notices required by law to be sent to Petitioner as a beneficiary to the Trust in the underlying superior court case were sent to Petitioner at two wrong addresses. Because of the fact that notices were sent to two wrong address, they parties had to know that at least one of these addresses was wrong. Further, the parties could have contacted Petitioner's father, Joseph Giles, who, at the time was imprisoned in Florida but who knew Petitioner's address. All they had to do was ask him for her address. They did not ask.

2. Shortly after the case was settled, James Scott Blevins' wife, Dena, without much trouble was able to contact Dan Thomas, Petitioner's grandfather/ grandfather/ guardian, by telephone, to inform him that Charles Giles had left money to Petitioner. She did not inform him that the money was ordered disbursed as a result of a court case settlement.

3. James Scott Blevins did not bring the underlying case for four (4) years and only did so when Dawn Morin forced the issue filing suit to force disbursement of her portion of the trust assets. During that time he was caught attempting to sell real property owned by the Trust to his brother at a greatly discounted price.

4. James Scott Blevins represented to the trial court in 2009 in his Petition to Approve and Confirm Account and Report of Trustee, Approval of Proposed Distribution and Payment of Trustee's Fees and, again, in his Amended Petition to Approve and Confirm Account and Report of Trustee, Approval of Proposed Distribution and Payment ,

of Trustee's Fees that all beneficiaries were adults. This, of course, was not true.


Because of the bad faith exhibited by James Scott Blevins, as above shown, he should not be afforded the equitable exemption allowed in Gorham.

VI. CONCLUSION

For the foregoing reasons, Petitioner Jozlyn Thomas respectfully requests that this Court issue a writ of certiorari to review the denial Petitioner's Petition for Review by the California Supreme Court.

Dated this twentieth day of September 2020.

Respectfully submitted,


Jozlyn Thomas, *In Pro Per*