

20-7165 ORIGINAL
No. 21- _____

IN SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

MARSHA JOSIAH,
Respondent- Petitioner

ROBIN E. JACKSON,
Petitioner- Respondent

ON WRIT OF CERTIOTARI TO THE UNITED STATES COURT

Following *California Supreme Court Case # S265656*
Affirmance of Order After Trial of the Sacramento County
Superior Court Probate Court by the Court of Appeal Third District,
Court Case No. C089963
(Super. Ct. No. 34-2017-00219410)

PETITION FOR THE PETITIONER

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- I. QUESTIONS PRESENTED Whether 14th Amendment Procedural due process violated by Probate court based on principles of “fundamental fairness,” addresses which legal procedures are required to be followed in state proceedings.
- II. QUESTIONS PRESENTED Whether a petitioner under the PROBATE CODE 16061.7 litigants only have 120 days after receiving notification from the trustee to contest the trust. Laches: lack of diligence and activity in making a legal claim.
- III. QUESTIONS PRESENTED Whether a review should be granted to resolve conflict among court of appeal decisions as to the need of a minimum 14th amendment requirement of satisfactory records in civil proceedings when a trust is contested in probate court.
- IV. QUESTION PRESENTED Whether the probate court should not have jurisdiction over trustees when no probable cause has been proven and that results in trustee removal as trustee under the probate code.

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V. Petition for Writ of Certiorari

Petition for Writ of Certiorari of petitioner Robin E. Jackson pro se litigant respectfully petitions this court for a writ of certiorari to review the opinion of the California Third District Court of Appeal, Order after Trial of The Superior Court of the State of California in and for the County of Sacramento.

VI. Opinions Below

On December 20, 2020, the decision by the California State Supreme Court denied Petitioner's Petition for Review filed on November 20, 2020. California Third district Appeals Court affirmed the decision of the Sacramento Superior Court Probate Court on October 21, 2020. Appellate Court's opinion attached as Appendix A ("App.") at 2-11. Robin E. Jackson (Jackson) appeals from an order removing her as a successor co-trustee of the Eddie Copeland Neighbors Trust (Trust) and surcharging her beneficial interest in the estate because she breached her fiduciary duties by using trust-owned property as a personal asset. We conclude that the record on appeal and Jackson's briefing are inadequate to permit review. We, therefore, are compelled to rely on the presumption of corrections and affirm the judgment. Sacramento Superior Court order after attached as Appendix A("App.") at 12-17.

VII. Jurisdiction

The California Supreme Court's denial of Petitioner's Petition for Review. Thus, California Third District Court of Appeal affirmed the decision of the Sacramento Superior Court Probate Department on October 21, 2020. The Third District Appellate Court 's Opinion is attached as Appendix A ("App.") at 2-11. Ms. Jackson invokes this Court's jurisdiction under 28 U.S.C. § 1291. Having timely filed this petition for a writ of certiorari within ninety days of the California State Supreme Court decision.

VIII. Statues and Constitutional Provisions Involved

California Probate Code section Probate Statues Involved

Section 850
Section 859

IX Constitutional Provisions Involved

United States Constitution, Amendment XIV: 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.

Section § 5 of the 14th Amendment to enacting laws that prevent or remedy violations of rights already established by the Supreme Court. Because the court is the authoritative interpreter of the constitution, not congress.

X.

STATEMENT OF THE CASE

1. The Trust established for your parent, and that parent has since died. You are named as principal trustee by the trust instrument and the co-trustee, your sister, files a frivolous lawsuit accusing you of fraudulently mishandling your mother's estate. Through three years of court proceedings, you provide evidence that there are no grounds for the allegations you were charged with, specifically; constructive trust violation common with managing of trust fraud or misappropriation of trust assets and/or self-dealing.
2. Our mother passed on June 11, 2015. Co-trustee Marsha Josiah filed a Petition complaint on September 21, 2017 against her only biological sibling Robin E. Jackson.
3. Petitioner 's attorney, Gary R. White, filed a Petition pursuant to Probate Code section 850(a) (3) (A) to establish ownership to real property, to return real property to a trust. Removal of co-trustee Robin E. Jackson, constructive trust, punitive damages, attorney fees, etc...

4. Petitioner's attorney Gary R. White alleged in the Section 850 petition, specifically section 859 which allows for damages equal to twice the value of the property recovered, if the property of an estate is taken, in bad faith.

5. This statute and reported authority do not support this contention 850(a)(3)(A) against Respondent, Robin E. Jackson due to the fact Petitioner Marsha Josiah, whom had knowledge of the transfer, had 120 days to contest the Trust transfer and did not do so. Several years after filing the Lawsuit Petition in Probate Court, I, by God's Grace, obtained an email that Petitioner Marsha Josiah had electronically sent to our mother's Trust attorney asking, can my sister, Robin E. Jackson put her name on our mother's Trust without my consent. This electronic email discussion occurred in June or July 2015. Petitioner Marsha Josiah never contested my transferring Title to my name, however; this law was violated, and Marsha Josiah was able to sue me, Robin E. Jackson, in California Probate Court and a ruling was given in favor of Marsha Josiah, even though these laws were violated by Marsha Josiah, her attorney Gary R. White, and The California Probate Court. See Probate Court docket entry 22nd Declaration.

14th Amendment Procedural due process, violated by Probate court based on principles of "fundamental fairness," addresses which legal procedures are required to be followed in state proceedings.

XI. Direct Appeal

On direct appeal, Jackson renewed argument that Petitioner /Respondent breach of her fiduciary to the trust. Respondent, Petitioner Marsha Josiah never presented all of elements established in law to protect those who have been harmed by a Breach of the fiduciary duty. Jurisdictions differ, in general the following four elements are essential if a petitioner is to prevail in a breach of fiduciary duty claim.

The duty, Petitioner / co-trustee did not show that a fiduciary duty existed. The Document of the Eddie Copeland Neighbors trust submitted to the court showed petitioner status equal to the Respondent.

As for the breach, the petitioner neglected to show that the breach of fiduciary duties occurred after petitioner / respondent filed objections with evidence that the breach of fiduciary duty did not occurred.

As for the damages, petitioner did not show that the breach of duty caused actual damages. Without damage, is there is no basis for a breach duty case. For example, a trustee might be sued for selling a co-trustee beneficiary's property. A dollar figure on the loss, or to repair the property, if needed to prove a breach of fiduciary duty.

Causation Shows that any damages incurred by the Petitioner were directly linked with the actions taken in breach of fiduciary duty. The co-trustee placing name on a grant deed as a personal representative of the Eddie Copeland neighbors trust Did not result in any damages to the Petitioner. The Petitioner was asked to place her name on the grant deed, and she said , "no", she did not want her name on the trust property.

In Rouse v. Underwood [Civ. No 257. Fifth Dist. May 19, 1966] That plaintiff's continued silence after she was chargeable with full knowledge of all the transactions was reasonably interpreted by the defendants as consent thereto, and that these defendants did change their position to their detriment in reliance thereon that plaintiff's continued silence after she was chargeable with full knowledge of all the transactions was reasonably interpreted by the defendants as consent thereto, and that these defendants did change their position to their detriment in reliance thereon.

Petitioner under the PROBATE CODE 16061.7 litigants only have 120 days after receiving notification from the trustee to contest the trust. Laches: lack diligence and activity in making a legal claim.

According to California Probate Code 16061.7 litigants only have 120 days after receiving notification from the trustee to contest the trust. The violations of the strict 120-day statute of limitations have an immediate negative impact on the administration of justice in the California Probate Court.

It should be noted, incidentally, that in California, the principle of laches may be invoked in a proper case to bar recovery on even an express trust. (Ewald v. Kierulff, 175 Cal. 363 [165 P. 942].)

Scott on Trusts, Second Edition, volume 4, section 481.1, page 3151, states: "... a constructive trustee ordinarily holds the property adversely to the beneficiary, and if the

beneficiary knows of the circumstances giving rise to the constructive trust, he may be barred by laches if he fails to sue within a reasonable time."

A statute of limitations should exist if it deprives one of property under violation of due process of law, when its application to an existing right of action, I Robin E. Jackson was designated by Eddie Copeland Neighbors trust as representative. Thus, there exist a right to place trust property in the trust with myself and sister as trustees. (discussing discretion of States in erecting reasonable procedural requirements for triggering or foreclosing the right to an adjudication) *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) A limitation should be deemed not an affect remedy, when it both arbitrary and oppressive to me as trustee and beneficiary to my mother Eddie Copeland Neighbors Trust, because of allegation of my breach of fiduciary duty of the Trust .

Laches is an equitable defense. It consists of a failure on the part of a petitioner to assert his rights in a timely fashion accompanied by a period of delay with consequent results prejudicial to the defendant; in proper circumstances, it constitutes an equitable bar to the maintenance of a plaintiff's alleged cause of action. A mere delay, considered alone, does not usually constitute laches; normally, to be an effective bar, the delay must be disadvantageous to a defendant, and constitute a quasi-estoppel. (*Cahill v. Superior Court*, 145 Cal. 42 [78 P. 467]; *Swart v. Johnson*, 48 Cal. App. 2d 829 [120 P.2d 699]; 18 Cal.Jur.2d, Laches, § 36, p. 201.)

Estoppel has been defined by the Supreme Court, in *Davenport v. Stratton*, 24 Cal. 2d 232, at page 243 [149 P.2d 4], as follows: "Estoppel may be defined to be a bar by which a man [242 Cal. App. 2d 325] is precluded from denying a fact in consequence of his own previous action which has led another to so conduct himself that, if the truth were established, that other would suffer. [Citation.]"

Petitioner and Respondent are equal in status in the Eddie Copeland Neighbor's Trust document provided to the court by Marsha Josiah's attorney Gary R. White.

As a beneficiary as well of the Eddie Copeland Neighbors Trust, their exists a protected interest as having a Legal interest and beneficial interest in trust property. The legal interest in the trust property refers to the right to possess or use property. It belongs to the legal owner, i.e., the person who is registered at the Sacramento Record office the

Title deeds. As the Legal interest gives the owner a right of control over the property, which means they can decide to sell or transfer the property. Beneficial interest is an interest in the economic benefit of a property.

Therefore, the court shall first determine that the trustee beneficiary who is to be terminated has no entitled legal right to the trust , and has caused, contributed to, enabled, or threatened loss, injury, waste, or misappropriation of the trust or of the trust home or its contents. In making this determination, the other trustee shall contact the trustee and , advise them of the proposed removal and the grounds therefor, and consider whatever information they provide.

(2) At the time of the removal, the trustee shall advise the trustee that a hearing will be held as provided.

A review should be granted to resolve conflict among court of appeal decisions as to the need of a minimum 14th amendment requirement of satisfactory records in civil proceedings when a trust is contested in probate court.

According to California Rules of the Court 3.1590

(d) Request for statement of decision: Within 10 days after announcement or service of the tentative decision, whichever is later, any party that appeared at trial may request a statement of decision to address the principal controverted issues. The principal controverted issues must be specified in the request. This was timely filed yet denied by The California Probate Court as untimely. Thus, violating Constitutional Fourteenth Amendment and Procedural Due Process rights.

(f) Preparation and service of proposed statement of decision and judgment

If a party requests a statement of decision under (d), the court must, within 30 days of announcement or service of the tentative decision, prepare and serve a proposed statement of decision and a proposed judgment on all parties that appeared at the trial, unless the court has ordered a party to prepare the statement.

In addition, California Rules of the Court Local Rules. 4.13 Trial Procedures were also ignored during the Probate Court proceedings. Appellant/Respondent, Robin E. Jackson was

denied Due Process and Fourteenth Amendment Constitutional rights to a Fair Trial on the First day of Trial. The Probate Court allowed expert witness testimony that Appellant/Respondent, Robin E. Jackson had no idea of this expert witness would be in this Probate Court Trial.

In *Kennemur v. State of California* (1982): This appeal presents two questions of importance to the trial bar: (1) the meaning of the phrase "the general [133 Cal. App. 3d 911] substance of the testimony which the witness is expected to give" as provided in Code of Civil Procedure section 2037.3 fn. 1 governing the contents of expert witness exchange lists; and (2) the meaning of the word "impeachment" as used in section 2037.5 governing the testimony of an expert witness on rebuttal where the general substance of the witness' proposed testimony was not disclosed before trial as required by section 2037.3. We hold the trial judge properly construed the meaning of these sections so that appellant's expert witnesses were not permitted to rebut the opinion testimony of respondent's expert.

I, Robin E. Jackson never withheld any evidence from the Probate Court that would give cause for "impeachment" In violation of my Constitutional Fourteenth Amendment and Procedural Due Process rights to a fair trial.

Petitioner /Respondent 14th Amendment Procedural due process, violated by Probate court based on principles of "fundamental fairness," addresses which legal procedures are required to be followed in state proceedings.

Furthermore, procedural due process claims should be dismissed at the beginning of a lawsuit when a complaint fails to allege facts that deal with the inadequacy of post-deprivation procedures. To successfully establish a *prima facie* case for a procedural due process violation, a petitioner showed that: (1) there has been a deprivation of the plaintiff's heired property, and (2) the procedures used by the government to remedy the deprivation were constitutionally inadequate. "At the core of procedural due process jurisprudence is the right to advance notice of significant deprivations of liberty or property and to a meaningful opportunity to be heard." *Abbott v. Latshaw*, 164 F.3d 141, 146 (3d Cir.1998). The focus is on the remedial process, not the government's actions that allegedly deprived the petitioner of her liberty or property interest.

See Probate Court Trial statement (Bahama Property and Lincoln Town car) which were assets of Eddie Copeland-Neighbor's Trust, and which Petitioner, Marsha Josiah took possession of those assets, the Probate Court charges me, Robin E. Jackson double the costs in its final judgement in relation to Probate Code section 859, which allows for damages equal to twice the value of the property recovered, if the property of an estate is taken, in bad faith.

When a Trustee is accused of causing damage to a Trust estate, the court can issue a surcharge against the Trustee. when a Trustee causes damage to a Trust estate. Economic damages that compensate the petitioner for their actual, measurable losses. Economic damages can be reimbursement for out-of-pocket expenses because of an injury. Costs associated with repairing or replacing damaged property.

The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law.

Court of Appeal Rules 8.155 & 8.340(c) for any documents filed or lodged in the case in superior court, 15 of my Declarations, which were filed in this Probate Court, somehow were not included in the documents submitted to the Appeal Court. The Probate Court mailed documents to me for appeal, and which had on the top box with the documents sent to me, Appellant/Respondent Robin E. Jackson, a disclaimer that stated, "nothing was omitted from the records". Thus, in violation of Appellant/Respondent Robin E. Jackson's Fourteenth Amendments rights and Due Process rights in the Constitution of the United States.

Rule 8.155 - Augmenting and correcting the record(a) Augmentation(1) At any time, on motion of a party or its own motion, the reviewing court may order the record augmented to include:(A) Any document filed or lodged in the case in superior court.

I, Robin E. Jackson was denied this fundamental and legal right. Thus, in violation of my

Fourteenth Amendment Procedural Due Process rights under the Constitution of the United States.

By reason of the express terms of the rules on appeal to which reference has been made, a litigant cannot, by adopting one form of appeal, foreclose his opponent from presenting to the reviewing court the entire record, or any material portion thereof, upon which the trial court based its judgment. The rules have the force of law and cannot be disregarded or ignored by litigant or court. This is a new procedure (17 So.Cal.L.Rev. 123) and must be given the effect intended although it is radically different from that previously in force. Any person who willfully destroys or alters any court record maintained in electronic form is subject to the penalties imposed by Government Code section 6201. Again, continued violations of my Fourteenth Amendment and Procedural Due Process under the laws of the United States Constitution. The State probate Court should have to follow proper procedures.

XII.

REASONS FOR GRANTING THE WRIT

THE PROBATE COURT SHOULD NOT HAVE JURIDICTION OVER TRUSTEES, WHEN NO PROBABLE CAUSE HAS BEEN PROVEN AND THAT RESULTS IN TRUSTEE REMOVAL AS TRUSTEE UNDER THE PROBATE CODE.

Petitioner claims that Probate Code section 17200 et seq. gives the probate court jurisdiction. These sections are part of division 9, "Trust Law," of the Probate Code revisions added by Statutes 1986, chapter 820, section 40, operative July 1, 1987. We hold that under the facts of this case, division 9 does not give the probate court jurisdiction over petitioner's claim
Estate of Mullins (1988) - 206 Cal. App. 3d 924, 255 Cal. Rptr. 430

(1) In proceedings relating to internal trust affairs or other purposes described in Prob.C. 17000 (infra, § 262 et seq.), the court may exercise jurisdiction on any basis that is not inconsistent with the California Constitution or the United States Constitution, as provided in C.C.P. 410.10. (See 2 Cal. Proc. (5th), Jurisdiction, § 107.)

The Petitioner's Beneficial Interest did not obtain profit or advantage from property derived from the terms of a trust agreement. A beneficiary of a trust has a beneficial interest in the trust property, the legal title of which is held by the trustee

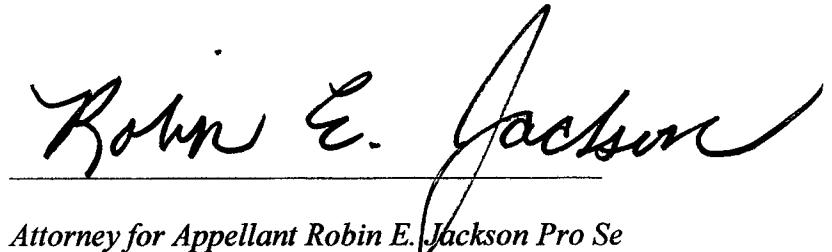
The beneficiary did not receive the advantages of ownership of the property which the trustee holds.

XIII. CONCULISON

For the foregoing reasons, Ms. Jackson respectfully requests that this Court issue a writ of certiorari to review the order after trial o the California Third District Court of Appeal and The Superior Court of the State of California in and for the County of Sacramento.

"I declare and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on

Date: January 19, 2021



Robin E. Jackson

*Attorney for Appellant Robin E. Jackson Pro Se
Litigant*