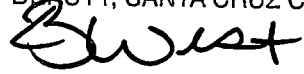


FILED
MAY 02 2023

CLERK OF THE COURT
BY BRITTANY WIST
DEPUTY, SANTA CRUZ COUNTY



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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ**

In re the Matter of:

THE 2012 FLESHMAN FAMILY TRUST, AS
AMENDED

Case Number: **21PR00218**

STATEMENT OF DECISION

SANDY DINI,

Petitioner,

v.

DAVID DICKINSON,

Successor Trustee and Respondent.

DAVID DICKINSON,

Successor Trustee and Petitioner,

v.

SANDY DINI,

Respondent.

1 On November 22, 2022, February 16, 17, and 22, 2023, the Court tried petitioner Sandy
2 Dini's Amended Petition to Invalidate the First, Second and Third Amendments to the 2012
3 Fleshman Family Trust; and For Surcharge; Cause of Action for Intentional Interference With
4 Expected Inheritance.

5 Petitioner, Sandy Dini ("Petitioner") was represented by Aaron J. Mohamed, Esq. and
6 Danielle L. deMartino, Esq. of Brereton, Mohamed & Terrazas, LLP. Respondent, David
7 Dickinson ("Respondent") was represented by Michael G. Desmarais, Esq.

8 The Court heard the testimony of six witnesses including David Dickinson, Sandy Dini,
9 Mark Dini, Rachel Lee, Nick Dini and Timothy Morgan. The Court considered multiply exhibits,
10 including petitioner's exhibits numbers 1, 4, 6, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22,
11 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 47, 49, 50, 53, 56, 58, 63,
12 64, 67, 68, 69, 70, 71, 72, and 73 and respondent's exhibit numbers 1, 5, 10, 12, 13, 17, 20, 22,
13 25, 26, 27, 28, 29, 31, 32, 35, 39, 45, 46, 48, and 50.

14 Following the completion of Petitioner's presentation of his evidence, on February 22,
15 2023, Respondent moved for judgment under Code of Civil Procedure section 631.8. The Court
16 considered and weighed all the evidence received, reviewed its 20 pages of notes of the evidence
17 presented, found that petitioner had not sustained her burden of proof and granted respondent's
18 motion and ordered that judgment be entered in favor of Respondent.

19 On March 1, 2023, Petitioner served a request for statement of decision. The Court now
20 makes its findings and enters its statement of decision.

21 Petitioner's amended petition asked the Court to find that notice of the hearing on her
22 petition was given as required by law, to invalidate the third amendment to the 2012 Fleshman
23 Family Trust and the second amendment to the 2012 Fleshman Family Trust, find Respondent
24 exercised financial elder abuse upon Charles Fleshman ("Charles") and Olean Fleshman
25 ("Olean") and thus should be disinherited from the 2012 Fleshman Family Trust, and require
26 Respondent to reimburse Petitioner's attorney's fees and costs and surcharge Respondent.

27 Petitioner gave notice of the hearing on her amended petition dated August 8, 2022 as
28 required by law.

1 In 2012, Olean and Charles retained Timothy Morgan, Esq., an estate planning, probate
2 and trust attorney to do their estate planning and draft their estate planning and testamentary
3 instruments. Mr. Morgan began representing them at that time and continually represented them
4 until both of them died. During Mr. Morgan's representation, he prepared the following
5 documents which were executed by Charles and Olean on the dates specified:

- 6 1. On June 12, 2012, Charles and Olean executed the 2012 Fleshman Family Trust;
- 7 2. On June 12, 2012, Charles executed the Last Will of Charles E. Fleshman;
- 8 3. On June 12, 2012, Olean executed the Last Will of Olean Sunshine Fleshman;
- 9 4. On May 2, 2015, Olean executed the Codicil to the Will of Olean Sunshine
10 Fleshman dated June 12, 2012;
- 11 5. On August 17, 2015, Olean executed the Codicil to the Will of Olean Sunshine
12 Fleshman dated June 12, 2012;
- 13 6. On September 25, 2015, Charles and Olean executed the First Amendment to the
14 2012 Fleshman Family Trust;
- 15 7. On September 25, 2015, Charles executed the First Codicil to the Will of Charles
16 E. Fleshman dated June 12, 2012;
- 17 8. On September 25, 2015, Olean executed the Codicil to the Will of Olean Sunshine
18 Fleshman dated June 12, 2012;
- 19 9. On February 1, 2016, Charles and Olean executed the Second Amendment to the
20 2012 Fleshman Family Trust;
- 21 10. On February 1, 2016, Charles executed the Second Codicil to the Will of Charles
22 E. Fleshman dated June 12, 2012;
- 23 11. On February 1, 2016, Olean executed the Codicil to the Will of Charles E.
24 Fleshman dated June 12, 2012;
- 25 On April 29, 2016, Charles died.
- 26 12. On August 9, 2016, Olean executed the Third Amendment to the 2012 Fleshman
27 Family Trust.

1 Petitioner presented no evidence that proved that Charles or Olean lacked testamentary
2 capacity at the time they executed any of the foregoing documents nor at the time they executed
3 the second amendment to the trust nor at the time that Olean executed the third amendment to the
4 trust. No evidence was introduced that showed that they did not have sufficient mental capacity to
5 be able to understand the nature of the testamentary act, understand and recollect the nature and
6 situation of their property, and remember and understand their relations to their living
7 descendants, each other, and those whose interest were affected by the trust or their Wills. No
8 evidence was introduced that proved that either of them suffered from a mental health disorder
9 with symptoms including delusions or hallucinations, which delusions or hallucinations resulted
10 in either of them devising property in a way that, except for the existence of the delusions or
11 hallucinations, they would not have done. (*Prob. Code* §§6100.5, 811, 812.)

12 Petitioner presented no evidence that proved that Charles or Olean were unduly influenced
13 to execute any of the foregoing documents, the second amendment to the trust or the third
14 amendment to the trust. No evidence was introduced that showed that either of them were
15 subjected to any persuasion, let alone excessive persuasion, that caused either of them to act or
16 refrain from acting by overcoming their free will and resulted in inequity.

17 There was no evidence that respondent actively participated in procuring any of the
18 foregoing documents nor that he unduly benefitted from them. Respondent did not destroy
19 Olean's or Charles' free agency and substitute his will for their will, at any time. (*Welf. & Inst.*
20 *Code* §§15610.70; *Estate of Baker* (1982) 131 Cal.App.3d 471, 480; *Estate of Arnold* (1940) 16
21 Cal.2d 573, 577; *Rice v. Clark* (2002) 28 Cal.4th 89, 96; *Estate of Lingenfelter* (1952) 38 Cal.2d
22 571, 586-587; *Estate of Gleason* (1913) 164 Cal. 756, 785; *Estate of Ventura* (1963) 217
23 Cal.App.2d 50.)

24 There was no evidence that Respondent engaged in financial elder abuse of Charles or
25 Olean. Nor did the evidence show that any of the foregoing documents were the product of elder
26 abuse. (*Welf. & Inst. Code* §§15610.30-15610.70.)

27 There was no evidence that showed that Respondent defrauded or misled Charles or
28 Olean. Nor did the evidence show that any of the foregoing documents were the product of fraud

1 or mistake. (*Civ. Code* §§1571, 1572, 1573, 1577, 1710.)

2 Petitioner does not have standing to prosecute a cause of action for tortious interference
3 with expected inheritance because there is an available probate remedy to contest the trust
4 amendments. In fact, Petitioner's amended petition seeks relief under that available probate
5 remedy. (*Prob. Code* §17200(b); *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1051-1052;
6 *Barefoot v. Jennings* (2020) 8 Cal.5th 822.)

7 Even if Petitioner had standing to prosecute a cause of action for tortious interference with
8 expected inheritance, the evidence shows that she is not entitled to any such relief. Petitioner has
9 not introduced evidence that proves to a reasonable degree of certainty that a bequest or devise to
10 her would have been in effect at the time of Olean's death, nor that Respondent engaged in
11 wrongful conduct that interfered with that reasonable certainty, which conduct was wrong for
12 some reason other than the fact of the alleged interference itself. Nor was there any evidence that
13 Respondent engaged in tortious conduct that induced or caused Olean or Charles to take some
14 action that deprived Petitioner of an inheritance. (*Beckwith v. Dahl, supra.*)

15 The Court finds no evidentiary or legal basis for ordering Respondent to reimburse
16 Petitioner's attorney's fees and costs nor to surcharge Respondent for anything.

17 The Court, therefore, orders judgment to be entered as follows:

- 18 1. The motion for judgment in favor of Respondent David Dickinson is granted;
- 19 2. Petitioner's Amended Petition to Invalidate the First, Second and Third
20 Amendments to the 2012 Fleshman Family Trust; and For Surcharge; Cause of Action for
21 Intentional Interference With Expected Inheritance is denied and the Third Amendment to the
22 2012 Fleshman Family Trust dated August 9, 2016 is not invalidated; and
- 23 3. Petitioner takes nothing by the amended petition and Respondent recovers from
24 Petitioner costs according to a timely submitted cost bill.

25
26 Date: 5/2/2023


27 Judge of the Superior Court

TIMOTHY R. VOLKMANN