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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JAVIER SOTO, Plaintiff and Appellant, v. LEE JESSUP, Defendant and Appellant.	B271622 (Los Angeles County Super. Ct. No. BP143224)

APPEAL from a judgment of the Superior Court of Los Angeles County. David J. Cowan, Judge. Affirmed.

Kerendian & Associates, Shab D. Kerendian; Keystone Law Group, Shawn S. Kerendian; and James A. Bush for Plaintiff and Appellant.

David Romley for Defendant and Appellant.

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An elderly man initially created a trust that would, upon his death, split his estate evenly between his godson and his apartment manager. Several years later, the man amended the trust to award nearly all of the estate to the apartment manager. After the man died, the godson sued to invalidate the amendment on the grounds of undue influence. The probate court found that the apartment manager had exerted undue influence, and reformed the trust to treat the apartment manager as if he had predeceased the elderly man, thereby leaving the entire estate to the godson. The apartment manager appeals, arguing that the court's ruling is infected by evidentiary error and unsupported by substantial evidence. The godson cross-appeals, but only if we reverse the probate court's ruling. Because we find no error in the probate court's ruling, we affirm and do not reach the merits of the cross-appeal.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Prior to his death, Billy Ray Williams (Williams) owned (1) two adjacent parcels of residential property in Los Angeles, on which sat a total of eight apartments, and (2) various investment accounts. In 2013, the fair market value of these assets was approximately $3 million.

In the 1970's, Williams befriended plaintiff Javier Soto (Soto). Soto was a boy at the time, and Williams treated him as—and called him—his "godson." For many years, Williams told his nieces and grandnieces that he would be leaving his estate to Soto.

Also in the 1970's, Williams began renting an apartment to defendant Lee Jessup (Jessup). In 1988, Williams asked Jessup to manage his apartments and granted him access to a special

bank account for those purposes.

In 1999, Williams told Jessup he was trying to draft a will, and Jessup referred him to a probate attorney who was one of Jessup's longtime friends.

In 2000, Williams met with the probate attorney and thereafter executed a holographic will and a living trust. The will left "1/2 Real Estate [and] 1/2 Municipals" to each Soto and Jessup. The living trust named Soto and Jessup as co-successor trustees who would share the trust's assets equally after Williams' death. Williams quitclaimed both parcels of property to the trust.

In the summer of 2007, the probate attorney mentioned to Jessup that he and Soto would eventually be "partners." This alarmed Jessup because he and Soto did not get along. Approximately one month later, Jessup drove Williams to the probate attorney's office. While there, at the age of 91, Williams signed a one-page amendment to the trust which (1) named only Jessup as the successor trustee, and (2) reduced Soto's share of the estate to $200,000, with the remainder going to Jessup.

In January 2011, Williams suffered a bad fall that required him to be placed in an assisted living facility. At that time, Jessup took control of all of Williams' assets pursuant to a durable power of attorney. Although Jessup denied doing so, Jessup refused to let Williams fly to Seattle to visit family members, and took Williams' family members and Soto off of the list of approved visitors at the assisted living facility.

In 2011 and 2012, Williams told his relatives, in letters and in telephone conversations, that back in 2007: (1) Jessup had "talked [him] into removing [Soto] from getting half the apartment property"; (2) Jessup "wanted all the property to go to"

him, but Williams had "insisted" that Soto get $200,000; (3) Williams "didn't have a choice" but to go along with Jessup's demands because Williams "was afraid of what would happen if he didn't" comply and because "somebody had to take care of his property" given that Williams was in his 90's; and (4) Williams "should have known better" than to use the probate attorney who "had been friends [with Jessup] for a number of years." Williams told his relatives he wanted to revise the trust's beneficiaries "if [he] ever got out from under [Jessup]." In 2012, Williams asked Soto to find him a new probate attorney and even met with that attorney. After receiving a letter from Jessup, however, Williams changed his mind and told Soto to "[g]et rid of the attorney." Williams would also send letters to the probate attorney who had drafted the trust and the amendment, but that attorney shared the letters with Jessup, and Jessup eventually told the attorney to disregard Williams' letters.

Williams died on January 26, 2013, at the age of 96.

II. Procedural Background

In July 2013, Soto filed a verified petition against Jessup and the probate attorney seeking to invalidate Williams' 2007 trust amendment on the grounds of lack of mental capacity and undue influence, to deem Jessup to have predeceased Williams and to remove Jessup as the trustee (pursuant to Probate Code sections 850, subdivision (a)(3), 17200, subdivisions (b)(3) and (b)(10), and section 21380).[1] Soto also sought damages, double damages under section 859, and/or an order deeming Jessup to have predeceased Williams due to (1) financial elder abuse (Welfare and Institutions Code section 15610.30), (2) conversion,

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1 All further statutory references are to the Probate Code unless otherwise indicated.

(3) unjust enrichment, and (4) breach of trust.

The probate court denied Jessup's motion for summary judgment and/or adjudication, and the matter proceeded to a five-day bench trial.

On March 28, 2016, the probate court issued an order granting Soto's petition in part and denying it in part. A few days later, on April 7, 2016, the court issued a 16-page final statement of decision in support of its order. The court granted Soto's petition to the extent it sought to invalidate the 2007 trust amendment on the ground of undue influence, to deem Jessup to have predeceased Williams, and to remove Jessup as trustee. The court awarded this relief after finding that (1) Soto affirmatively proved undue influence, and (2) Soto alternatively proved that the statutory presumption of undue influence applied, and Jessup had not rebutted that presumption. In support of these findings, the court found the Williams had amended the trust at Jessup's behest because Williams "believed he had no choice" due to Jessup's control over Williams' income stream from the apartment and Williams' advanced age. The court also found that Jessup had exerted undue influence over Williams while Williams was in the assisted living facility between 2011 and 2013. The court rejected Soto's claims that Williams lacked mental capacity, and declined to award damages or double damages because Jessup did not "per se" "take," "conceal," or "dispose" of trust property.

On April 14, 2016, Jessup filed a notice of appeal, purporting to appeal from the "April 7, 2016" "judgment."[2] On

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2 Although Jessup's notice of appeal mistakenly refers to a judgment entered on April 7, 2016—when it was the final statement of decision that was entered on that date—we still

May 31, 2016, Soto filed a timely notice of cross-appeal.

DISCUSSION

In his appeal, Jessup argues that the probate court's ruling granting Soto's petition in part must be reversed because (1) the court erred in considering evidence from 2011 through 2013 because the issue was Williams' state of mind when he executed the trust amendment in 2007, and (2) insufficient evidence supports the probate court's finding of undue influence. In his cross-appeal, Soto contends that the probate court erred in denying him damages and double damages under section 859, but expressly indicates that we should "deem[]" the cross-appeal "withdrawn" if we reject Jessup's arguments on appeal. Because, as explained below, we are affirming, we deem Soto's cross-appeal withdrawn and do not reach its merits.

I. Evidentiary Challenges

Jessup asserts that the probate court erred in considering any and all evidence of Williams' statements while he was in the assisted living facility between 2011 and 2013, because that evidence (1) is not relevant to his intent at the time he executed the trust amendment in 2007, and (2) runs afoul of the rule, set forth in *Estate of Silva* (1915) 169 Cal. 116, 121-122 (*Silva*), that courts may not grant relief when a decedent is prevented from revoking his will. We review evidentiary rulings for an abuse of discretion. (*People v. Clark* (2016) 63 Cal.4th 522, 597.)

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have jurisdiction. We "have discretion to treat statements of decision as appealable when . . . [the] statement . . . is signed and filed and does, in fact, constitute the court's final decision on the merits." (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901.) Here, it does.

When a person challenges a will or trust on the ground that it is the product of undue influence, the critical question is whether the testator's free will was overpowered ""'"at the very time the will [or trust] was made."'"" (*Estate of Welch* (1954) 43 Cal.2d 173, 175-176 (*Welch*), quoting *Estate of Gleason* (1913) 164 Cal. 756, 765.) Although the focus is on the testator's state of mind at the time the testamentary document was made, the trier of fact "may consider facts bearing upon undue influence both before and after execution so long as they tend to show such influence when the will [or trust] was executed." (*Estate of Baker* (1982) 131 Cal.App.3d 471, 481 (*Baker*); *Estate of Larendon* (1963) 216 Cal.App.2d 14, 19 ["proof of the facts . . . is not limited to the actual time the will is executed"].)

In this case, the evidence from the 2011 to 2013 timeframe falls into two categories: (1) Williams' statements about why he signed the trust amendment in 2007; and (2) evidence showing the power dynamic between Williams and Jessup, including Jessup's role in getting Williams to abandon his attempt to amend the trust in 2012.

The probate court did not abuse its discretion as to either category of evidence. The first category bears directly on what Williams was thinking at the time he executed the trust amendment. The second category constitutes circumstantial evidence of the power dynamic between Williams and Jessup at the time of the trust amendment in 2007; if Jessup had the power to influence Williams between 2011 and 2013, the logic goes, he had the power to do so in 2007. Undue influence is often proved with circumstantial evidence. (*Baker*, *supra*, 131 Cal.App.3d at p. 481.) Although the power dynamic during the two periods was not identical (because Jessup controlled *all* of Williams'

financial affairs in 2011 by virtue of the durable power of attorney, but only controlled Williams' primary stream of income in 2007), the threshold of relevance is a low one. (Evid. Code, § 210.) Despite some differences in Jessup's power over Williams between the two periods, Jessup's influence in the later period "ha[s] a[] tendency in reason to prove" his power to influence Williams in the earlier period. (Evid. Code, § 210.) *Silva* does not preclude the probate court from considering the evidence that Jessup dissuaded Williams from changing his trust in 2012. *Silva* held that a court "cannot *give relief* for a fraudulent prevention of a revocation of [a] will" (*Silva*, *supra*, 169 Cal. at pp. 121-122, italics added); *Silva* does not preclude a probate court from considering that prevention as evidence of the power dynamic between a testator and a person accused of unduly influencing him.

II. Sufficiency of the Evidence

Jessup next contends that sufficient evidence does not support the probate court's finding that he unduly influenced Williams to amend the trust in 2007. We review this finding for substantial evidence. (*In re Marriage of Dawley* (1976) 17 Cal.3d 342, 354 [undue influence is a question of fact]; *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 765 [questions of fact are reviewed for substantial evidence].) Substantial evidence is evidence that (1) is reasonable, credible, and of solid value, and (2) is sufficient for a reasonable trier of fact to reach the same ruling as the one under review. (*David v. Hernandez* (2017) 13 Cal.App.5th 692, 702.) In making this assessment, we review the entire record in the light most favorable to the ruling below. (*Ibid.*; *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 303.)

As a general rule, a testator may "dispose of property as he or she sees fit without regard to whether the dispositions specified are appropriate or fair." (*Estate of Sarabia* (1990) 221 Cal.App.3d 599, 604; Welf. & Inst. Code, § 15610.70, subd. (b) ["Evidence of an inequitable result, without more, is not sufficient to prove undue influence."].) However, a testator's disposition will be set aside if it is the product of undue influence. (*Welch*, *supra*, 43 Cal.2d at pp. 175-176.) Under the common law, "[u]ndue influence is pressure brought to bear directly on the testamentary act, sufficient to overcome the testator's free will, amounting in effect to coercion destroying the testator's free agency." (*Rice v. Clark* (2002) 28 Cal.4th 89, 96.) Under the statutory definitions designed to "supplement the common law," "undue influence" means "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." (§ 86 [incorporating definition of "undue influence" contained in Welfare and Institutions Code section 15610.70]; Welf. & Inst. Code, § 15610.70, subd. (a) [defining "undue influence"].) The statutory definition also identifies a number of factors bearing on undue influence—namely, (1) the victim's vulnerability, which includes age, (2) the influencer's authority, which includes "status as a fiduciary," (3) the "actions or tactics used by the influencer," which include "[c]ontrolling necessaries of life," and (4) the "equity of the result." (Welf. & Inst. Code, § 15610.70, subd. (a); *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 857.)

Under these definitions, substantial evidence supports the probate court's finding that Williams' act of amending the trust in 2007 was the product of Jessup's undue influence. Williams

himself told others that Jessup had "insisted" that Williams amend the trust to remove Soto as a beneficiary and that Williams felt had had no "choice" but to comply; if he did not do as Jessup instructed, Williams feared, he was unsure what would happen to his income stream from the apartments over which Jessup had sole control. This type of pressure satisfies both the common law and statutory definitions of "undue influence." The statutory factors only confirm this result: Williams was vulnerable because he was in his 90's, had relied upon Jessup for 30 years to control his property and manage his finances, and was not in a position to resume those responsibilities if Jessup left; Jessup acted as Williams' agent—and hence as a fiduciary—with respect to Williams' primary source of income (e.g., *Ashburn v. AIG Financial Advisors, Inc.* (2015) 234 Cal.App.4th 79, 100); Jessup used this authority to take advantage of Williams' vulnerability by threatening to quit as apartment manager, enlisting the probate attorney (Jessup's longtime friend) to execute the 2007 Amendment, and preventing Williams from later revoking the amendment; and Jessup's actions resulted in inequity because Williams was unable to fulfill his wish of leaving Soto at least half of his estate.

Jessup assails the probate court's ruling on two grounds. Both, however, boil down to the same contention—namely, that the court erred in applying the presumptions of undue influence because (1) Jessup was not in a fiduciary or confidential relationship with Williams, which is a requirement of the common law presumption, and (2) Jessup did not fall into any of the categories specified in section 21380, which is required by the statutory presumption. Under both the common law and statute, a petitioner challenging a will or trust can either affirmatively

prove undue influence, or prove the facts necessary to trigger a presumption of undue influence that must then be rebutted by the party benefitting from the challenged will or trust. (See *Bernard v. Foley* (2006) 39 Cal.4th 794, 800 [setting forth common law presumption]; § 21380 [setting forth statutory presumption].) We need not entertain Jessup's attacks on the probate court's use of the presumptions because its ruling independently and sufficiently rests on Soto's affirmative proof of undue influence, as we have explained above. (See *People v. Chism* (2014) 58 Cal.4th 1266, 1295, fn. 12 ["'we review the ruling, not the court's reasoning, and, if the ruling was correct on any ground, we affirm'"].)

DISPOSITION

The judgment is affirmed. Soto is entitled to his costs on Jessup's appeal.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.