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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Estate of BEATRICE BEHRENDT BURK,  
Deceased.

B234018

EDLYN BURK-SOORANI,

(Los Angeles County  
Super. Ct. No. BP115912)

Petitioner and Appellant,

v.

CELINE BURK as Executor, etc.,  
et al.,

Respondents.

APPEAL from an order of the Superior Court of Los Angeles County.

Michael I. Levanas, Judge. Affirmed.

Haney Torbett and Steven H. Haney for Petitioner and Appellant.

Sean K. Higgins for Respondents Celine Burk and Robert Simon.

Portales, Smith & Hall and Alejandro Portales for Respondent Francesca Gasaway.

Pursuant to sections 850 and 856 of the Probate Code, when a decedent dies having a claim to real or personal property, title to or possession of which is held by another, any “interested person” may file a petition requesting that the probate court adjudicate the adverse claim and order the person having title to or possession of the property to execute a conveyance or transfer to the estate. Appellant filed such a petition here, seeking the return of property to her decedent mother’s estate. Although appellant was the decedent’s daughter, the trial court found she was not an “interested person” within the meaning of Probate Code section 850 because she had no financial interest in the decedent’s estate that could be affected by her petition. It therefore sustained respondents’ demurrer to her petition on the ground that she lacked standing. We agree that appellant is not an interested person within the meaning of the Probate Code, and therefore affirm.

## **BACKGROUND**

### **1. Factual Background**

On December 31, 2003, Beatrice Burk executed a will in which she bequeathed her personal property to her daughters, appellant Edlyn Soorani, respondent Celine Simon, and respondent Francesca Gasaway, in equal shares, and assigned the residue of her estate to the Beatrice Behrendt Burk Living Trust (sometimes the Burk Living Trust), which was established on the same date by a separate instrument.

On March 8, 2007, Beatrice<sup>1</sup> restated the Burk Living Trust, specially assigned to it two parcels of real property located in California and a parcel located in the Netherlands, and two financial accounts, and executed a general assignment to the trust of her “right, title and interest in and to all property” which she then owned “or may later acquire, whether real, personal or mixed, and whether tangible or intangible.” The assigned property included all of her “personal effects including, but not limited to,” antiques, artwork, automobiles, clothing, collectibles, furnishings, furniture and jewelry. The trust appointed Beatrice and Celine as co-trustees, Celine as successor trustee, and

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<sup>1</sup> To avoid confusion we will refer to the parties by their first names.

Francesca as the second successor trustee. Beatrice and Celine, as co-trustees, accepted the general assignment of assets.

The restated trust confined Edlyn's share of the trust estate to \$1.5 million. In June 2007, Beatrice amended the trust by reducing Edlyn's share to \$1.4 million.

In January 2008 Beatrice further amended the trust to provide that Edlyn's share was to be funded by "any Trust property (real, personal or mixed), and in any proportion of each as the Trustee, in the Trustee's sole and absolute discretion, deems appropriate."

Also on March 8, 2007, the day she restated the Burk Living Trust, Beatrice executed a new will. The will devised several "personal effects," including household furniture, musical instruments, jewelry, paintings, personal automobiles, "and all other tangible personal articles," to certain individuals. All items not disposed of, if any, were to bequeathed to the residue of the estate. This residue, which included all property, "real, personal and mixed, wherever situated," was bequeathed to the Beatrice Behrendt Burk Living Trust. Beatrice stated in the will, "I intend by this Will to dispose of all my property (collectively, my 'Estate'). This applies despite the form or manner in which the property is held."

Beatrice died on February 26, 2009.

Both before and after Beatrice's death, Edlyn instituted multiple civil proceedings against her sisters and Beatrice's caregivers and filed several challenges in the probate department to her mother's estate plans. Three of the actions are pertinent here. In each of them, Edlyn alleged causes of action for financial elder abuse and neglect constituting elder abuse against Celine, Francesca, and respondent Robert Simon (a physician and Celine's husband).

First, in December 2008, two months before Beatrice died, Edlyn petitioned the probate department of the Los Angeles Superior Court for removal of Celine as trustee of the Burk Living Trust, invalidation of the 2007 and 2008 trust amendments, and recovery of trust property. (*In re the Beatrice Behrendt Burk Living Trust dated December 31, 2003, as restated and amended* (Super. Ct. L.A. County, 2008, No. BP114281) (Edlyn's trust petition).) On September 27, 2010, the trial court sustained Celine's demurrer to the

petition without leave to amend on the ground that it had not been diligently prosecuted. Edlyn did not appeal from the resulting judgment of dismissal, and it has become final.

The second proceeding was initiated by Celine, who in April 2009 petitioned the probate department of the Los Angeles Superior Court for probate of Beatrice's 2007 will. (*In re Estate of Beatrice Behrendt Burk* (Super. Ct. L.A. County, 2009, No. BP115912) (Celine's will petition).) Edlyn contested entry of the 2007 will into probate, arguing it was invalid and void because Beatrice was incompetent when she executed it. When Celine later withdrew the probate petition, the trial court denied Edlyn's will contest as moot. Edlyn has not appealed this ruling.

The second proceeding is important here because in connection with it, Edlyn filed a Probate Code section 850<sup>2</sup> petition for recovery of estate property, alleging financial elder abuse and neglect constituting elder abuse against respondents Celine, Francesca and Robert. She alleged respondents had confined Beatrice and isolated her from her family, controlled her actions, raided her estate, misappropriated her property, and neglected her medical needs. Edlyn sought removal of Celine and Francesca as executors of Beatrice's estate, transfer of property to the estate, imposition of a constructive trust, an accounting, damages, and a determination that Celine and Francesca be deemed to have predeceased Beatrice pursuant to section 259 (a person liable for elder abuse may be deemed to have predeceased the person abused).

In connection with Edlyn's section 850 petition, Celine served two requests for admission on Edlyn, seeking admissions that (1) Beatrice intended that all of her property would pass outside of probate on her death and (2) there is no property that should pass through probate. When Edlyn failed to respond to the requests, the trial court ordered that the two matters be deemed admitted.

Celine, Robert and Francesca then demurred to and moved to strike Edlyn's amended section 850 petition, arguing Edlyn had no standing under sections 48 and 850 to seek return of assets to Beatrice's estate because she had no interest in the estate

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<sup>2</sup> All statutory references are to the Probate Code unless indicated otherwise.

beyond the \$1.4 million granted to her by the Burk Living Trust, a grant she did not dispute was fully funded.

At a hearing on the matter, Edlyn did not contend her \$1.4 million share of the Burk Living Trust was unfunded. Instead, she sought an accounting of Beatrice's estate only so she could choose which trust assets would be allocated to her share. Respondents argued that pursuant to the 2008 trust amendment, sole discretion to choose which assets to allocate to Edlyn's share rested with the trustee, not any beneficiary. On May 26, 2011, the trial court sustained respondents' demurrers without leave to amend on the ground that Edlyn lacked standing under sections 48 and 850 to petition for return of estate assets.

Edlyn appealed from the resulting judgment of dismissal on June 27, 2011.

Meanwhile, Edlyn instituted a third proceeding. On May 20, 2010, she filed a civil lawsuit in superior court against several entities and individuals, including respondents, for wrongful death, intentional infliction of emotional distress, financial elder abuse and neglect constituting elder abuse. (*Burk-Soorani v. Simon* (Super. Ct. L.A. County, 2010, No. BC437799).) Respondents demurred to the complaint on the ground that Edlyn lacked standing under the Welfare and Institutions Code. The trial court, Judge Rex Heeseman presiding, agreed in part. It sustained respondents' demurrers to Edlyn's elder abuse causes of action without leave to amend, finding Edlyn lacked standing under Welfare and Institutions Code section 15657.3, subdivision (d)(1)(C). Judge Heeseman overruled respondents' demurrers to Edlyn's other causes of action, and the lawsuit is ongoing.

## **DISCUSSION**

Edlyn first contends the trial court erred when it denied her challenge to Celine's will petition. Edlyn has waived the argument because she appealed only from the May 26, 2011 judgment dismissing her own section 850 petition, not the February 22, 2011 order denying her challenge to Celine's petition. At any rate, Edlyn's challenge to Celine's will petition became moot when Celine withdrew the petition.

Edlyn’s primary contention on appeal is that the probate court erred in determining she had no standing to prosecute a financial elder abuse claim against respondents in her section 850 petition. She argues she has such standing under Welfare and Institutions Code section 15657.3. Respondents argue she has no standing under Welfare and Institutions Code section 15657.3.

Strictly speaking, Welfare and Institutions Code section 15657.3 is irrelevant here because Edlyn brought her petition under section 850, which has its own standing provision. Welfare and Institutions Code section 15657.3 confers standing to bring an elder abuse action on any “interested person, as that term is defined in Section 48 of the Probate Code.” (Welf. & Inst. Code, § 15657.3, subd. (d)(1)(C).)<sup>3</sup> As pertinent here, section 48 defines “interested person” as any “heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent *which may be affected by the proceeding.*” (§ 48, subd. (a)(1), *italics added.*)<sup>4</sup> Section 850 also confers standing on an “interested person” as defined in

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<sup>3</sup> Welfare and Institutions Code section 15657.3, subdivision (d) provides in pertinent part: “(1) . . . [A]fter the death of the elder or dependent adult, the right to commence or maintain an [elder abuse] action shall pass to the personal representative of the decedent. If there is no personal representative, the right to commence or maintain an action shall pass to any of the following . . . : [¶] (A) An intestate heir whose interest is affected by the action. [¶] (B) The decedent’s successor in interest . . . . [¶] (C) An interested person, as defined in Section 48 of the Probate Code . . . . [¶] (2) If the personal representative refuses to commence or maintain an action or if the personal representative’s family or an affiliate . . . is alleged to have committed abuse of the elder or dependent adult, the persons described in subparagraphs (A), (B), and (C) . . . shall have standing to commence or maintain an action for elder abuse.”

<sup>4</sup> Section 48 provides: “(a) Subject to subdivision (b), ‘interested person’ includes any of the following: [¶] (1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. [¶] (2) Any person having priority for appointment as personal representative. [¶] (3) A fiduciary representing an interested person. [¶] (b) The meaning of ‘interested person’ as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.”

section 48. (§§ 20 [definitions set forth in sections 20 to 88 apply across the Probate Code]’ 850, subd. (a)(2)(D); 856.) Because Welfare and Institutions Code section 15657.3 and section 850 both confer standing on any “interested person,” both relying on section 48 for the definition of that term, the standing requirements are the same for our purposes. The issue is whether Edlyn is an “interested person.”

Edlyn argues she is an interested person under section 48 because she is Beatrice’s heir and beneficiary. Respondents argue Edlyn is not an interested person because she has no right in or claim against the estate either of Beatrice or the Burk Living Trust that can be affected by her section 850 proceeding.

We agree with respondents. To be an “interested person” within the meaning of section 48 a claimant must have a property right in or claim against the estate of a decedent or a trust estate which may be affected by the section 850 proceeding. But pursuant to the provisions of the Burk Living Trust, Edlyn had no claim against Beatrice’s estate because all of the estate passed to the trust during her lifetime. Edlyn also had no claim against the trust estate that could be affected by the section 850 proceedings because her share was fixed at \$1.4 million, which she impliedly admitted was funded. As recently held by our colleagues in the Third District in *Lickter v. Lickter* (2010) 189 Cal.App.4th 712, to pursue an elder abuse action as a trust beneficiary, “the beneficiary must have ‘a property right in or claim against [the] trust estate . . . which may be affected by the’ elder abuse action.” (*Id.* at p. 728.) Here, Edlyn has no claim against the trust estate that could be affected by her section 850 petition.

Edlyn argues *Lickter v. Lickter* was wrongly decided—that section 48 confers standing on a decedent’s heirs and beneficiaries whether or not they have such a claim. We disagree.

As aptly stated by the Third District in *Lickter v. Lickter*, “Long before the definition of [interested person] now found in Probate Code section 48 was added to the code in 1983 [citation] the concept of an ‘interested person’ was well developed in California probate law. And as that concept was understood, it included the idea that the

person had to have an interest of some sort that could be impaired, defeated, or benefited by the proceeding in question to be ‘interested’ in that proceeding.

“For example, in *Estate of Land* (1913) 166 Cal. 538 [137 P. 246], the California Supreme Court addressed ‘the question of what is meant by the words “any person interested,” as used in [former] section 1327 of the Code of Civil Procedure, conferring the right upon any person interested to contest the validity of a will within one year after it has been admitted to probate.’ [Citation.] In answering that question, the court explained as follows: ‘It may freely be conceded that if it is made to appear that a person has such an interest as may be impaired or defeated by the probate of the will, or benefited by setting it aside, he is a person interested. This would appear to be the common sense meaning of the term, and no good reason can be made to appear for giving it a broader or different meaning. . . .’ [Citation.]” (*Lickter v. Lickter*, *supra*, 189 Cal.App.4th at p. 727, fn. omitted.) “Thus, it has long been clear under California probate law that a person who can claim the title of ‘heir’ is not necessarily an ‘interested person’ for purposes of instituting or participating in a particular proceeding in a probate case. The question, rather, is whether the person—whether an heir, devisee, beneficiary, or other person—has an interest of some sort that may be impaired, defeated, or benefited by the proceeding at issue.” (*Id.* at p. 728.)

Section 48 thus requires ““a legal interest and not merely a grievance to the feelings of propriety or sense of justice”” for standing to pursue reclamation of property to a decedent’s estate. (*Estate of Land* (1913) 166 Cal. 538, 543.) Here, although she is Beatrice’s daughter, Edlyn has no legal interest in the decedent’s estate that could be affected by return of property to the estate through section 850 proceedings.

Edlyn contends for the first time in her reply brief that she retains an interest in Beatrice’s nontrust estate because, despite the general assignment of all of Beatrice’s assets to the Burk Living Trust and the trustees’ acceptance of the assignment, there could exist some property outside the trust that the assignment did not reach. In the absence of a will, she argues, any such property would go to her through intestate succession. She argues the possible existence of such property gives her an interest in the



estate, which confers standing on her for purposes of section 850. She does not identify the property, but urges that an accounting might reveal its existence.

This line of argument contradicts Edlyn's position below, where she urged that all misappropriated assets be returned to the trust estate so she could choose which assets would fund her \$1.4 million share. We decline to address the argument raised for the first time in the reply brief. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 482, fn. 10 [reviewing court may disregard new point raised for first time in reply brief].)

Finally, we note that that Edlyn is currently prosecuting a civil lawsuit against respondents in which she also alleges causes of action for elder abuse. Although Judge Heeseman has sustained respondents' demurrers to those causes of action without leave to amend, the case remains pending and the ruling sustaining the demurrers will not be final until judgment is entered. (Code Civ. Proc., § 904.1 [an order sustaining a demurrer is not an appealable order].) Any challenge by Edlyn to denial of standing to raise elder abuse claims in a civil lawsuit—as opposed to a section 850 petition—must come by way of a petition for writ in that lawsuit or an appeal after judgment is entered.

#### **DISPOSITION**

The judgment is affirmed. Respondents are to receive their costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.