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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Conservatorship of the Person and
Estate of SUSAN MANUEL.

B266834
(Los Angeles County
Super. Ct. No. BP141252)

GREGORY (MANUEL) MANVELIAN,

Petitioner and Respondent,

v.

YANA MARIE MANVEL,

Objector and Appellant.

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

Law Offices of Michael Leight and Michael Leight for
Objector and Appellant.

Adam L. Streltzer for Petitioner and Respondent.

INTRODUCTION

Yana Manvel appeals the trial court's order overruling her objections and granting a petition by Gregory Manvelian for a conservatorship of their mother, Susan Manuel, and appointing a neutral person, rather than Yana, as the conservator. Because substantial evidence supports the trial court's order, and the court did not abuse its discretion in appointing a neutral conservator rather than a family member, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Susan and Her Children*

Susan, whose husband died in 2007, was 85 years old in 2015. She has two children, Yana and her younger (by a year) brother Gregory. Gregory is married and has two children.

Yana and Gregory do not get along. Although the roots of their hostility stretch back to their childhoods, tensions between the two siblings escalated when they became adults, as they jockeyed for position to control, manage, and ultimately inherit their mother's assets.

B. *Susan's Disappearing Estate*

At one time Susan had substantial assets. Over the last 10 years, however, most of her assets have been transferred to Yana. In 2007 Yana received from Susan three gifts of real property: two parcels in Imperial County and one in Orange County that

includes an income-producing commercial mall.¹ In May 2008 Yana received as gifts from Susan two condominiums Susan owned in the Ocean Towers buildings in Santa Monica: Unit 601B, where Susan lives, and 602B, which is next door. Yana owns and lives in a third condominium in the complex.

Susan created a revocable trust in May 2006. Since then, Susan has been active in revising her estate plan and executing various trust amendments and restatements, health and financial powers of attorney, and similar documents. Some of the documents included terms favoring Gregory, some of them had terms favoring Yana. For example, in December 2007 Susan's trust was amended to provide that Yana was the sole beneficiary. In January or February 2012, however, Gregory became a 50 percent beneficiary when Susan's trust was amended to provide an equal division of assets between Yana and Gregory. This amended trust includes a \$1 million penalty against Yana if Yana evicts Susan from Unit 601B (which, as noted, Yana now owns). Yana disputes the authenticity and validity of this instrument.

By 2012, however, Yana had regained the upper hand in the family inheritance stakes. In July 2012 Susan's trust was amended to revoke any power of attorney that may have appointed Gregory as Susan's agent, and in March 2013 it was amended again to name Yana as the sole primary beneficiary and the first successor trustee. In addition, the primary beneficiary of Susan's \$1.4 million Individual Retirement Account (IRA) was changed from 50 percent for Yana and 50 percent for Gregory to 100 percent for Yana. In May 2012 and March 2013 financial

¹ Susan transferred the Orange County property again to Yana in April 2012 when Yana thought she had lost the original deed.

powers of attorney were signed designating Yana as Susan's agent. In May 2013 an advance health care directive was signed stating that, if the court ever appointed a conservator for Susan, Susan wanted Yana to be the conservator. On May 3, 2013 Susan obtained a temporary restraining order against Gregory.

C. *The Conservatorship Proceedings*

Five days later, on May 8, 2013, Gregory filed this action for appointment of conservatorship of Susan's person and estate, proposing himself as the conservator. The petition included the signatures of Gregory and Susan. Two days later, on May 10, 2013, Susan's trust was again amended, this time omitting Gregory as a beneficiary entirely and nominating Yana as the sole successor trustee. Also executed were powers of attorney naming Yana as Susan's agent and a health care directive naming Yana as Susan's proposed conservator.

The family then proceeded to litigate the conservatorship petition. The court appointed temporary conservators and an expert, Dr. Susan Bernatz, to conduct an evaluation of Susan pursuant to Evidence Code section 730.² The court held an

² Evidence Code section 730 provides: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any

evidentiary hearing on Susan's capacity to retain her own attorney for the proceedings, determined she did not have that capacity, and appointed counsel for her from the Probate Volunteer Panel. Gregory ultimately amended his petition to withdraw his request the court appoint him as Susan's conservator and asked the court to appoint a neutral conservator.

The court conducted a trial on the petition over seven days during the first half of 2015. Susan, Yana, and Gregory testified, as did Bernatz and several percipient witnesses. The trial did not concern the validity of all of the amendments to Susan's trust because, as the trial court noted, "this case is solely one for a conservatorship; not a trust proceeding." Nevertheless, the court recognized that "the events surrounding these alleged amendments provide the background as to what is *in part* motivating the current litigation."

D. *The Trial Testimony*

Bernatz, the expert appointed by the court, submitted a report and testified at trial that, in her opinion, Susan needed a conservator, even though Susan told Bernatz she did not want a conservator. Bernatz noted that Susan "had significant memory deficits as reflected by a zero out of three on recall of memory mental state exams," medical imaging of Susan's brain showed degenerative disease, and Susan's doctor had prescribed medication for dementia. Bernatz testified that because Susan "had significant cognitive deficits, specifically in the area of memory and executive functioning," she would have difficulty managing her finances. Bernatz also concluded that Susan was

service as a witness, at the amount as seems reasonable to the court."

susceptible to undue influence because of her “glaring vulnerability with significant cognitive impairment and her dementia diagnosis,” her dependency on Yana to manage her medical care and finances, and her isolation from third parties who were trying to help her. Bernatz stated her opinion that a conservator would best serve Susan’s needs because of the “contentious family dynamics,” Susan’s isolation and lack of socialization with her peers, and her history of gait imbalance and accompanying risk of falling. Bernatz stated appointment of a conservator would “create an unbiased environment” that would allow all family members to be involved in Susan’s care and assist Susan with her medical and financial needs.

Joseph Focil, a financial advisor at Wells Fargo Advisors who worked with Susan and saw her often at the bank with Yana, testified that Susan had memory problems and needed help handling her finances. Focil remembered Susan telling him that she did not know how much money she had. Focil believed, based on his interactions with Yana, that Yana felt the money at Wells Fargo was her money. Focil also stated that he often saw Yana pressuring Susan to do things at the bank. He recalled receiving a telephone voicemail message asking to withdraw funds from an account, and Focil heard Yana in the background saying, “Mom, tell them you want to withdraw funds.” Focil recounted another incident when Susan and Yana came to the bank with another individual and demanded the release of all of the money in the IRA. Focil reported to Wells Fargo management he suspected financial elder abuse, and Wells Fargo forwarded the information to state investigators. The Wells Fargo “Elder Initiative Team” froze the account.

Focil testified he made a second report of possible abuse when he learned the funds in Susan's account "had been depleted significantly," and Yana brought Susan to the bank and said, "Mom, Mom. . . . Tell him. Tell him. We want the funds. We want the funds. Tell him." Susan signed a form requesting distribution from the IRA of \$1.4 million. Focil took Susan aside and asked her if she wanted the funds released, and Susan said, "I don't know." Focil then asked Susan, "Is there someone pressuring or asking you to release these funds? Is there something that is prompting you to do this?" Susan again responded, "I don't know." When he tried to advise Susan and Yana about the possible adverse tax consequences of withdrawing the money from the IRA, Susan told him to do whatever Yana said. Focil also reported this incident to Wells Fargo management as financial elder abuse.

Kenneth Braun, an estate planning attorney who had represented Susan since 2012 and who prepared the original petition for conservatorship, met with Susan and Gregory in May 2013. Braun testified that he believed Susan wanted a conservatorship because "Yana was systematically getting [Susan] to transfer all her assets to her personally and to leave Greg without anything." He also felt Susan was subject to undue influence. Susan told Braun she was concerned that Yana had induced her to transfer to Yana the condominium where she lived. Susan did not understand why she no longer owned the unit in which she lived or why she had transferred it to Yana in May 2008, and she wanted legal advice on how to protect herself "if Yana at any point decided to move Susan out of her condominium because [Yana] was now the owner of Susan's condominium." Susan also did not know why she had transferred

the commercial property in Orange County to Yana. Susan told Braun, “Yana’s taking me and having me sign many things and many documents.”

Gregory testified Susan was “a fall risk” and needed full-time care. He stated Susan cannot cook for herself, has “hygiene issues,” and lives in a “filthy” unit with tissues and trash on the floor. He said Susan complains she has no money because Yana is taking it. Gregory admitted he and Yana argue when they are together, which upsets their mother. Gregory recounted one occasion when Yana “got agitated, threw a temper tantrum, [and] started telling [Susan] a lot of fabrications,” including that Gregory had taken Susan’s driving privileges away, killed their father, and taken Susan’s money. Gregory thought a neutral conservator would allow Susan to see him and his children and would allow Susan to have relationships with friends. Gregory stated, “I would like to be my mom’s conservator, but I think it’s in the best interest to have someone that’s neutral, unbiased and has some authoritative function to make sure that what my mom wants is what she gets.”

Two of Yana’s friends from church, Bruce and Kathleen Isacson, testified about their observations of and interactions with Susan. The Isacsons, unemployed ministers (ordained at Assemblies of God International) who claimed they had been trying to “minister to” Yana, generally obtained housing by moving in with (and then moving on to other) family members, friends, and acquaintances. Yana met the Isacsons at church and in August 2014 invited them to live in the condominium next to Susan’s unit. Yana thought the Isacson family would be staying

for a weekend, but they ended up staying until December 2014.³ The Isacsons originally assisted Yana in her efforts to keep Gregory away from Susan and her money, but they ultimately switched sides and testified at trial for Gregory and against Yana.

Bruce Isacson testified Susan was a sweet woman who could not remember his name, “was unkempt,” “smelled like she needed a bath,” and “seemed to need a lot of love and attention that she didn’t seem to be getting.” He stated Susan’s bathrooms were not clean, her apartment “smelled terribly of cigarette smoke,” and there were always cashew shells all over the floor. Bruce Isacson also testified that he saw Yana screaming at, intimidating, and verbally abusing Susan, which would cause Susan to shake and mutter under her breath. He also testified Yana was physically abusive with Susan. He stated he felt “Susan needed to be protected from Yana.”

According to Bruce Isacson, Yana told him “her brother was very dangerous, that she was trying to get all the money hidden that she had of her mother from her brother,” and that she hated her mother and wished she were dead. He also related that Yana would have him write scripts of things for Susan to say to Susan’s court-appointed lawyer, and then at Yana’s request he would rehearse the scripts with Susan. Bruce Isacson stated Yana told him Gregory was responsible for their father’s death and had broken Susan’s arm or shoulder. He said Susan told him “it really upset her that [Yana] hated Greg and that she loved Greg, and she wanted to see her grandchildren. And she was very sad

³ Yana testified that the Isacsons moved in on August 29, 2014, she asked them to leave at 10:00 a.m. on December 15, 2014, and they actually left on December 21, 2014.

by the hatred [Yana] was showing her brother.” He also stated Susan showed no signs that she feared or was angry with Gregory, and had “very close, intimate” conversations with him. He also said Susan told him she loves both Yana and Gregory, and wanted to see her grandchildren more.

Bruce Isacson, who went with Yana and Susan to the bank to withdraw funds from the \$1.4 million IRA, also testified that Yana told him she was trying to withdraw the money from the account “just in case there was a conservatorship [and] she wanted to get the money out of accounts to keep it from her brother as well as the conservator.” When Focil advised against the withdrawal at the bank, Yana “got hostile with him,” “cussed him out and walked away.”

Finally, Bruce Isacson described how Yana tried to isolate Susan from her friends and neighbors. He testified, “There [were] times when [Yana] was taking Susan from the apartment to the car down the elevator where other neighbors sometimes would try to communicate, say hello, and [Yana] would quickly rush Susan away and not allow any communications to take place.” He also explained how Yana had turned off Susan’s telephones so they did not ring and people could not reach Susan by phone.

Kathleen Isacson, who said she was starting a clothing design business and was “going back into acting,” largely confirmed her husband’s testimony. She described Susan as “disheveled, in need of a shower,” wearing “the same outfit,” and “in need of care.” Kathleen Isacson stated that during October and November 2014 she spent three to five hours a day with Susan, six days per week. She recalled one occasion where she found Susan on the floor in the bedroom after defecating on the

carpet. She stated Susan “couldn’t remember simple things,” would look out the window and ask if it was morning or evening, and could not remember whether she had eaten. Kathleen Isacson also said Susan had trouble understanding basic financial transactions and did not know what a credit card was.

Kathleen Isacson testified she had seen Yana become angry with Susan, yell at her, and act abusive toward her. She observed Susan was frightened of Yana, “like a beaten child, insecure.” She stated Yana told her she had to hide Susan’s money because Gregory “was trying to get it all,” and she had to liquidate Susan’s IRA to “hide the money from Greg.” She also testified Yana asked her and her husband to help her keep Gregory out of Susan’s apartment, and she confirmed Yana turned off Susan’s telephones. Yana told her “over and over” that Gregory was “a very, very dangerous, bad man.” When asked what Susan said to her about Gregory, Kathleen Isacson stated, “She misses him. She loves him. She’s sorry that Yana hates him. She says, ‘I’m desperate to talk to him,’ and she tells me about his family.”

Yana essentially denied all of the statements by Focil, Braun, and the Isacsons about her conduct and her relationship with her mother and her brother. She testified Susan’s residence is clean, Susan has everything she needs to live her life on a daily basis, and “for the most part, [Susan] takes care of herself.” Yana said she assists her mother and does what Susan asks her to do, including managing her finances. Yana denied yelling at or abusing Susan, instructing the Isacsons to prevent Gregory from visiting Susan, making any derogatory comments about Gregory to their mother, and restricting access to Susan. Yana stated

that all of the allegations about her treatment of her mother were actually things Gregory did to their father.

According to Yana, Susan hates Gregory, thinks he stole \$23,000 from her to get hair plugs, and says he is a “cockapoo.” Yana testified Susan is “sick” of Gregory, does not want to see him, does not want him in her apartment, and says “he can go to hell.” Yana stated that when Gregory calls Susan does not answer the telephone because she does not want to talk to him. Yana denied having any animosity towards Gregory, although she said she has tried to “accommodate his inadequacies” and his “disability.” She said, however, that Gregory has been angry and violent towards her since she was four years old, and has tried to cheat her out of her inheritance.

Yana also testified she discussed the proposed conservatorship with Susan, and Susan said, “Hell, no.” Yana said Susan is a strong person who values her independence, and appointing a conservator would kill her.

To support her version of the family’s relationship and Susan’s ability to care for herself, Yana called Ashley Yusefe to testify at trial. Yusefe was a security guard before Yana met her at a car dealership and hired her to care for Susan. Yusefe assisted Susan several days a week for three to five hours a day, for approximately a year. Yusefe helped Susan buy groceries, do her laundry, and get her hair and nails done. Yusefe stated Susan paid her by writing her a check. When asked about Susan’s memory, Yusefe said Susan “is a character” who “knows what she’s doing” but allows other people to do things for her. She stated Susan’s memory loss was not as “severe” as she has seen in other people. Yusefe confirmed Yana’s testimony that Yana provides Susan with exceptional care and has never been

abusive toward her mother, and that Susan does not need a conservator.

E. *The Trial Court's Decision*

The trial court found that the “overwhelming evidence of Yana’s wrongful conduct here justifies both a conservatorship of a person and estate.” On the petition for a conservatorship of the person, the court found by clear and convincing evidence that Yana had exercised undue influence on Susan by, among other things, isolating Susan from Gregory and his family, restricting access to Susan by preventing people from seeing her and turning off the ringer on Susan’s phones, and convincing Susan that Gregory was dangerous. The court found that alternatives to a conservator, such as Yana’s health care directive for Susan, were “insufficient to protect Susan’s overall health and welfare.”

The court cited Bernatz’s opinion “that a conservatorship of person and estate were needed to a reasonable degree of certainty based upon Susan’s physician . . . having in 2012 found Susan suffered from dementia and that Susan had significant cognitive impairments, including in particular as to very basic transactions like at a store Further, Bernatz found that Susan was isolated and needed a *neutral* person to help her through the feud between her children where she was susceptible to undue influence. Finally, Bernatz opined that Susan also lacked the capacity to make medical decisions for herself in view of her short term memory problems.”

On the petition for a conservatorship of the estate, the court found by clear and convincing evidence that “Yana wrongfully took a substantial amount of Susan’s IRA money, caused potentially unnecessary tax liability and sought to take

the funds that were remaining. Further, the continuing trust amendments (whether valid or not) show that Susan is subject to continuing undue influence. In particular, the Court lacks confidence as to the validity of Yana having become successor trustee where such came concurrent with Gregory seeking a conservatorship. It is not clear to the Court that Yana is doing anything but protecting her own perceived interests as a potential trust beneficiary. . . . In addition, the Court heard no reason why Susan, unbeknownst to her, would have already conveyed her own home to Yana. For these reasons, Yana holding a financial power of attorney does not properly protect Susan and gives Susan no way to ensure Yana does not abuse that power—as the evidence shows she has done.” The court stated that a conservatorship was necessary “to prevent unquestionable undue influence from Yana.”

The court, having observed Susan during the trial and heard her testimony, also found that it “was apparent to the Court that she had no conception of what was happening and often (off the record at the back of the courtroom) shouted out comments revealing that she did not know why she was there or made other statements of confusion.” The court stated that it did not notice any desire on Susan’s part not to be with her son, whom she sat next to during the trial, and that Susan’s testimony corroborated the court’s observations “that she lacked any meaningful understanding of what was happening or as to her needs.” The court found that Gregory had “rebutted the presumption that Susan has capacity by clear and convincing evidence that she lacks such capacity [and] is subject to undue influence.”

The court further found that “Susan is not in a position to look after herself, either as to her person or her estate, without assistance from someone,” and that when Yana has had control over her mother she “has abused her position of trust, to Susan’s detriment” The court concluded there was good cause for the court to protect Susan because she was “not able at this time to look after herself or her financial affairs and indeed that without such protection a manifest abuse will continue.”

The court also found Yana’s testimony not credible. The court discredited Yana’s attempts to attack the Isacson’s descriptions of their experiences with Yana and Susan, Focil’s account of his encounters with Yana and Susan at the bank, and the evidence showing that Yana tried to hire an attorney other than the court-appointed attorney to represent her mother in the conservatorship proceeding. The court stated that “the cross-examination of Yana demonstrated her ill will towards Gregory—making her manifestly unsuitable as a conservator. Her short direct testimony, flatly denying all of the other witnesses’ damaging testimony, was not convincing. She provided no plausible rationale to rebut the considerable testimony attesting to her wrongful conduct or anything to substantiate her claim that Gregory was a threat to Susan.”

Finally, the court concluded that a neutral, professional conservator “would most promote Susan’s best interests and true wishes.” The court acknowledged that “there will be expense involved” in such a conservatorship, but “such expense may be less expensive to her estate than the ongoing and likely further litigation regarding who will ultimately inherit from Susan and or be the beneficiary of her trust.” The court stated that “a conservatorship of the estate is also needed, notwithstanding that

certain assets are in trust, because there is evidence to suggest Yana wrongfully took money from the IRA (that is not in trust), put in jeopardy the remaining funds in the IRA account by potentially making it subject to tax which it would not otherwise have been and sought to take the remaining money for herself.” The court also noted that, because the amendments to the trust were disputed and Susan is no longer in a position to manage the trust assets, a neutral conservator would be able to seek judicial determinations regarding an accounting of the IRA and other bank accounts, the validity of the trust amendments, and whether Yana or Susan should be responsible for attorneys’ fees for legal work generated by Yana’s conduct.

The trial court entered orders granting Gregory’s supplemental petition and appointing a neutral conservator for her mother. The court also issued letters of conservatorship. Yana timely appealed.

DISCUSSION

Yana argues that “[t]here is no substantial evidence to support the trial court’s order” appointing a conservator. She argues that “[t]here is nothing that a conservator of the estate can do for Susan, at a charge of hundreds of dollars per hour, plus hundreds of dollars per hour for a conservator’s attorney, that is not already being done by Yana or that cannot be done by Yana.”

A. *Applicable Law and Standard of Review*

Probate Code section 1801, subdivision (a),⁴ provides in relevant part that a “conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter” Section 1801, subdivision (b), provides in relevant part that a “conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence” The standard of proof for the appointment of a conservator under section 1801 is clear and convincing evidence. (§ 1801, subd. (e); *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 546; *People v. Karriker* (2007) 149 Cal.App.4th 763, 780; *Conservatorship of Sanderson* (1980) 106 Cal.App.3d 611, 620.)

We review the trial court’s decision to appoint a conservator for substantial evidence. (*Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401.) “To determine if the order is supported by substantial evidence, we review the record in the light most favorable to the trial court’s findings, resolving all evidentiary conflicts and drawing all reasonable inferences in favor of the judgment. [Citations.] The testimony of one witness may be sufficient to support the findings.” (*Conservatorship of the Person of B.C.* (2016) 6 Cal.App.5th 1028, 1033-1034; see *Conservatorship of Isaac O.* (1987) 190 Cal.App.3d 50, 57 [reviewing court “ordinarily looks only at the evidence supporting the successful party, and disregards the contrary showing”].) “Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom.” (*Conservatorship of*

⁴ Undesignated statutory references are to the Probate Code.

Walker (1989) 206 Cal.App.3d 1572, 1577; see *Conservatorship of Carol K.* (2010) 188 Cal.App.4th 123, 134 “[s]ubstantial evidence, which is evidence that is reasonable, credible, and of solid value, also includes circumstantial evidence”].) We “will sustain the trial court’s factual findings if there is substantial evidence to support those findings, even if there exists evidence to the contrary.” (*In re Conservatorship of Amanda B.* (2007) 149 Cal.App.4th 342, 347.) The decision to appoint a neutral or professional conservator rather than a family member is reviewed for abuse of discretion. (*Conservatorship of Ramirez*, at p. 403; see *Guardianship of Mosier* (1966) 246 Cal.App.2d 164, 177.)

B. *Yana Has Standing To Appeal*

As a preliminary matter, although only in the last few pages of his respondent’s brief, Gregory argues Yana lacks standing to appeal the trial court’s order under *Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62. *Gregory D.* is distinguishable.

In *Gregory D.* the court-appointed attorney for a developmentally disabled adult conservatee filed a petition for instructions on how the conservators “could best administer [the] conservatorship so as to minimize further disputes between the parties.” (*Conservatorship of Gregory D.*, *supra*, 214 Cal.App.4th at p. 65.) The trial court issued certain instructions regarding visitation by the conservatee’s divorced parents and other lifestyle issues. (*Id.* at p. 66.) One of the conservatee’s parents appealed the orders on various grounds. The court held that the parent did not have standing to challenge violations of rights that belong to the conservatee, not the parent. (*Id.* at pp. 67-68.)

The parent's appeal in *Gregory D.* did not involve an order granting or denying a petition to appoint a conservator; the court in that case had already appointed the conservator. Yana's appeal in this case is from the order establishing the conservatorship over her objections and appointing someone other than herself as conservator. The order affects Yana's rights to serve as Susan's conservator, which Susan had indicated in an advance health care directive she wanted. The trial court's order also affects Yana's rights and duties as Susan's financial and health care agent and as trustee of Susan's trust, which as the trial court noted are disputed.

Moreover, the appointment of a conservator will have a direct and certain impact on Yana's ability to keep assets Susan transferred to her and that Yana claims are hers. The trial court specifically found that a neutral conservator was needed to assist in determining the validity of the trust amendments, whom the beneficiaries of Susan's trust and IRA should be, and who should serve as trustee of Susan's trusts. Given the amount of money at stake for Yana and the trial court's directions to the conservator, Yana is aggrieved by the trial court's order appointing a conservator and has standing to appeal. (See *In re K.C.* (2011) 52 Cal.4th 231, 236 ["[a]n aggrieved person, for [the] purpose [of standing to appeal], is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision," and "standing to appeal is construed liberally, and doubts are resolved in its favor"]; *Estate of Colton* (1912) 164 Cal. 1, 5 ["any person having an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment, is a party aggrieved and entitled to be

heard upon appeal”]; *Rohr Industries, Inc. v. First State Ins. Co.* (1997) 59 Cal.App.4th 1480, 1486 [same].)

C. *Substantial Evidence Supports the Trial Court’s Appointment of a Conservator*

There was substantial evidence that Susan was unable to provide for her physical health and to manage her financial resources. There was evidence that Susan had suffered significant deterioration of her memory and mental functioning, was confused about whether she had eaten and what time of day it was, had difficulty walking and was at risk for falling, and was unable to care for herself. There was evidence that Susan was not in good health, lived in an unsanitary residence, and was unable to control her bowels. There was also evidence that Susan could not cook meals or take medicine without assistance. And the dissention among Susan’s children and the continuing attempts by Yana and Gregory to control Susan’s disposition of her estate were causing Susan so much stress that she exhibited physical symptoms of emotional discomfort, such as rapid breathing and muttering to herself. There was also evidence Susan was unable to manage her finances, was unable to write checks and balance her checkbook, did not understand what her assets were or when or how Yana had obtained most of them, and believed she still owned property she had transferred to Yana years before.

There was also substantial evidence of undue influence by Yana that Susan was unable to resist. (§ 1801, subd. (b); see *Conservatorship of the Person of B.C.*, *supra*, 6 Cal.App.5th at p. 1034 [“a ‘conservator of the estate’ may be appointed if the conservatee is substantially unable to manage financial

resources, or resist fraud or undue influence”]; *Conservatorship of Bookasta* (1989) 216 Cal.App.3d 445, 449 [“[a] conservator may be sought where the proposed conservatee is unable to see to his or her own basic physical needs . . . or to manage his or her own estate or to do so free from undue influence”].) There was evidence that Yana was pressuring Susan to give her Susan’s real property and retirement assets in ways that Susan did not understand and could not resist. Several witnesses said Yana was verbally and physically abusive toward Susan. An independent third party professional in the banking industry twice suspected Yana of, and reported Yana for, financial elder abuse. An attorney for Susan expressed concern Yana was systematically taking all of Susan’s assets without any understanding on Susan’s part that the transfers were occurring. There was also evidence that Yana was orchestrating her mother’s life to exclude Gregory and his family. As Bruce Isacson put it, Yana was the producer, and this was her show.

Yana attacks the truthfulness and character of some of the witnesses at trial, in particular Bernatz and the Isacsons. She asks rhetorically, “How can the court rely upon the recommendation of Dr. Bernatz for the appointment of a conservator for Susan when Dr. Bernatz admitted, by her conduct, that Susan was competent to understand and execute an engagement agreement with Dr. Bernatz, and that Susan was competent to write checks to Dr. Bernatz[?] Did Susan become incompetent after she wrote the check?” With respect to the Isacsons, Yana argues that the trial court allowed the Isacsons,

whom Yana calls “fantasists” and “grifters”⁵ who make “a living off people who want to get close to the flame of the entertainment industry,” to “turn the courtroom into an amateur theater.” She claims the trial court erred by discounting certain statements Kathleen Isacson made that were complimentary of Yana but finding Kathleen Isacson “was truthful in criticizing Yana after Yana forced her to move” out of Unit 602B.

Name-calling aside, Yana has some good points. It was inconsistent for Bernatz to testify that Susan was unable to manage her finances but was able to retain Bernatz as a therapist and write checks for her services. It also was unusual, and professionally questionable, for Bernatz, a court-appointed expert, to solicit Susan as a patient, enter into a retainer agreement with her, and have Susan write her checks for her work on this case, all without court approval. (See Evid. Code, § 731, subd. (c) [“in all civil actions, the compensation fixed under [Evidence Code] section 730 shall, in the first instance, be apportioned and charged to the several parties in a proportion as the court may determine”]; *Baker-Hoey v. Lockheed Martin Corp.*

⁵ “[T]he slang term ‘grifter’ . . . has a wide variety of connotations which largely depend on the context of the term’s usage. The numerous definitions of ‘grifter’ include but are not limited to the following: gambler, confidence man, swindler, person who operates a sideshow at a circus, and dishonest person.” (*Russo v. Conde Nast Publications* (E.D.La. 1992) 806 F.Supp. 603, 607, fns. omitted; see *Roberts v. Mintz* (N.J. Super. Ct. App. Div. 2016) 2016 WL 3981128, at p. 6 [“‘grifters’ . . . can be used to describe unscrupulous or deceptive business practices”].) Yana testified she used the term, as applied to the Isacsons, to mean somebody who cheats others out of money or property or who swindles others, to obtain by fraud or deceit.

(2003) 111 Cal.App.4th 592, 599 [“Evidence Code section 731 provides for the payment of costs of a court-appointed expert”].) Similarly, there were reasons to question the truthfulness of the testimony by the Isacsons, who seemed to shift their loyalties and testimony depending on which way the financial support wind was blowing.

Nevertheless, the trial court credited Bernatz’s testimony, despite its inconsistencies. The trial court also believed the Isacsons, while acknowledging there was some basis for questioning “the veracity of their testimony.” The court, however, ultimately concluded their testimony, or at least parts of it, was credible, because they “acknowledged in open court their prior wrongful conduct” and because their testimony made “sense.” Such credibility determinations are for the trial court, not the reviewing court. (See *Estate of Dodge* (1971) 6 Cal.3d 311, 318 [trial court’s “resolution of a conflict in [the] evidence” is “binding” on an appellate court]; *Brewer v. Simpson* (1960) 53 Cal.2d 567, 587 [trier of fact is the “exclusive judge” of “the credibility and effect of the testimon[y]” of witnesses]; *Estate of Teel* (1944) 25 Cal.2d 520, 526 [trial court “is the sole judge of the credibility and weight of the evidence”]; *Estate of Young* (2008) 160 Cal.App.4th 62, 76 [“[w]e may not reweigh the evidence and are bound by the trial court’s credibility determinations”].)

Yana’s reliance on her trial testimony and the testimony of Yusefe fails for the same reason: the trial court discredited both. The court specifically stated it did not find Yana’s testimony truthful. With respect to Yusefe, the court stated that “her testimony seemed intended to be defensive of her ostensible employer, Yana.” These are the kind of credibility determinations with which we cannot interfere. (See *In re I.J.*

(2013) 56 Cal.4th 766, 773 [““issues of fact and credibility are the province of the trial court””]; *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1372 [“we must be ever mindful of the fact that it is the exclusive province of the trier of fact to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends”]; *Conservatorship of Rand* (1996) 49 Cal.App.4th 835, 842 [“we defer to the trial court on issues of witness credibility”]; *People v. Adams* (1993) 19 Cal.App.4th 412, 438 [“demeanor evidence does not appear on the record, and for that reason has led to the rule that the fact-finder is the exclusive judge of credibility”].)

Finally, Susan’s behavior and testimony at trial was substantial evidence of her inability to take care of herself and understand the nature of the conservatorship proceedings. Susan had repeated outbursts of confusion and frustration in the courtroom. When she testified, she did not know Gregory’s children were her grandchildren, did not remember where she lived or her husband’s name, believed she lived in a house (which she still owned) rather than a condominium (which she didn’t), and did not remember when she had retired from working. Susan did not know how old she was, did not remember her birthday, and did not know if her house was a multi-floor building and, if so, what floor she lived on. When asked what she used to do for a living, Susan answered, “I feel wonderful. I have good friends, and [a] son and his wife, and everything else. I am happy. And I don’t – I don’t know.”

When counsel for Gregory asked Susan questions about her understanding of the court proceedings, Susan testified:

“Q: Do you know why you are here in court?

“A: I am questioning myself, why they put me – come here, which is a waste of time.

“Q: You think being here today is a waste of time?

“A: Yes. But it’s nice to see my family, it’s my son and most of those people.

“Q: It’s nice to see your family, including your son Gregory?

“A: Yes, sure.”

Susan further testified:

“Q: Do you think the judge should be worried about you?

“A: No.

“Q: Why?

“A: Because if I am a person [then] I belong to human beings, who should – people exist together. If they are – if they know each other. Do you exist? Do you? So why should I worry about anybody. I don’t worry about it.”

When asked to talk about her business, Susan testified:

“A: I don’t talk about anything about myself. And I know there are people that they live there and they don’t bother each other, that’s [what] human beings do.

“Q: Do you own a shopping center in Orange County?

“A: That’s stupid to ask me. I don’t know.

“Q: You don’t know?

“A: I don’t remember.”

When asked if she knew what owning a piece of property meant, Susan answered, “I don’t know. I don’t put my nose in anybody’s business.”

Regarding the transfer of assets to Yana, Susan testified:

“Q: Do you recall giving your daughter any money?

“A: “I don’t think of that because my daughter is – She has what to do, work to do. She knows. Why should I put my nose in her business, she’s with me.

“Q: But it’s your money?

“A: It is not my money. She doesn’t use my money, she has her own money.

“Q: What does your daughter do for a living?

“A: I don’t know. Why do you ask me a stupid question like that?

“Q: Does your daughter earn any money on her own?

“A: I don’t know. I don’t ask her.”⁶

Regarding her family, Susan testified she loved both her daughter and her son. When asked if she was angry at Gregory, Susan answered, “Not at all. I am never angry. You can keep on asking me anything even though you are a millionaire or not, a million questions. I don’t know millionaire. You have a million questions, doesn’t bother me because all I have to do is give you the answer and go home.”

D. *The Trial Court Did Not Abuse Its Discretion in Appointing a Neutral Conservator*

Yana argues that, even if substantial evidence supports the trial court’s order appointing a conservator, the court should have appointed Yana as conservator. Yana cites section 1810, which

⁶ Yana testified that she works at home as an “inventor,” volunteers her time, and manages real estate. She stated she invented a product that shows a person who is using blinds which cord opens the blinds and which cord closes the blinds. The real estate she manages is the commercial property in Orange County she received from Susan.

provides “if the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed.” She also cites section 4126, subdivision (a), which provides, “a principal may nominate, by a durable power of attorney, a conservator of the person or estate or both . . . for consideration by the court if protective proceedings for the principal’s person or estate are thereafter commenced.” Yana points out that an advance health care directive Susan signed in May 2013 nominates Yana as conservator if the court appoints a conservator.

The trial court did not abuse its discretion in appointing a neutral conservator, as counsel for Gregory and counsel for Susan had requested, rather than Yana. As the trial court explained, “neither party was able to suggest another family member who was not already aligned with one or other of the parties. Susan needs to be able to see both her children and her grandchildren. Such is only likely with a neutral person[,] given what has occurred already. The considerable evidence of Yana having been the cause of Susan not seeing her son or his children . . . provides ample reason for a conservator other than Yana.” Abundant evidence supports the trial court’s ruling.

E. *Any Noncompliance with Section 1828 Did Not Preclude the Trial Court from Appointing a Conservator*

Yana argues that the trial court should not have appointed a conservator because the court did not comply with section 1828, which requires the court to inform the proposed conservatee of

various things, such as the “nature and purpose of the proceeding,” the “identity of the proposed conservator,” and the proposed conservatee’s rights to counsel and a jury trial. (See § 1828, subd. (a).) The statute further provides that, after the court gives these advisements, “and before the establishment of the conservatorship,” the court must consult with the proposed conservatee to determine his or her opinion regarding the proposed conservatorship and conservator. (§ 1828, subd. (b).) Yana argues that neither she “nor her counsel have any recollection of the court complying with Section 1828,” which compliance, Yana asserts, must occur “before the trial starts and not after the completion of the presentation of the evidence.”

Susan, however, through her attorney, waived her advisement rights under section 1828. The advisements under section 1828 “are not constitutionally required” and “can . . . be validly waived by the proposed conservatee’s counsel.” (*Conservatorship of Mary K.* (1991) 234 Cal.App.3d 265, 271; see *Conservatorship of the Person of B.C.*, *supra*, 6 Cal.App.5th at p. 1030 [“probate conservatorships do not require a personal waiver of the conservatee’s right to a jury trial because the proceedings pose no threat of confinement and are conducted ‘according to the law and procedure relating to the trial of civil actions’”].) And Yana provides no authority for her assertion, made for the first time in her reply brief, that counsel for the proposed conservatee must waive his or her client’s rights before the close of evidence. Section 1828 says that the court must inform the proposed conservatee of the six advisements listed in subdivision (a) “before the establishment of a conservatorship,” not before the trial, and there is no reason a proposed conservator or his or her

attorney cannot waive his or her rights under the statute before, during, or after the trial.

Moreover, any error in complying with section 1828 was harmless. The trial court stated it had consulted with counsel for Susan regarding Susan's opinion on the issues listed in section 1828, subdivision (b), and the court understood in making its "decision that Susan does not want a conservator, that if there is to be a conservatorship she nominates Yana and that establishing an estate would interfere with her right to enter into the transactions identified in [section] 1870."⁷

(See *Conservatorship of the Person of B.C.*, *supra*, 6 Cal.App.5th at p. 1036 [proposed conservatee's "sentiments were fully represented to the court by her attorney"]; *Conservatorship of Forsythe* (1987) 192 Cal.App.3d 1406, 1413 [section 1828 "does not require individual consultation nor even a record of the consultation given"].) Thus, the trial court had the "proposed conservatee's opinion concerning" the issues in section 1828, subdivision (b): Susan did not want a conservatorship and, if a conservatorship was required, Susan wanted Yana as the conservator. The court appointed a neutral conservator anyway, and substantial evidence supports that order. To the extent there was any technical noncompliance with section 1828, it was harmless.

⁷ Section 1870 provides that "'transaction' includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right."

DISPOSITION

The judgment is affirmed. Gregory is to recover his costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

KEENY, J.*

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