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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

EDLYN BURK-SOORANI,

Plaintiff and Appellant,

v.

ROBERT SIMON,

Defendant and Respondent.

CELINE BURK et al.,

Plaintiffs and Appellants,

v.

FRUMEH LABOW,

Defendant and Respondent.

B251686

(Los Angeles County Super. Ct. No. BC432426)

APPEAL from the judgments of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Keiter Appellate Law and Mitchell Keiter for Plaintiff and Appellant Edlyn Burk-Soorani.

Ramey Law, John F. Ramey, James Doddy, for Plaintiffs and Appellants Celine Burk and Francesca Gasaway.

Peterson Bradford Burkwitz, George E. Peterson, Richard Barrios, for Defendant and Respondent Robert Simon.

Lewis Brisbois Bisgaard & Smith, Roy G. Weatherup, Bartley L. Becker, Allison A. Arabian, for Defendant and Respondent Frumeh Labow.

This appeal involves two consolidated cases stemming from the medical care and conservatorship of Beatrice Burk, who died in February 2009 when she was 89 years old. Plaintiffs are, among others, Beatrice's three daughters: Edlyn Burk-Soorani, Celine Burk, and Francesca Gasaway.[1]

Plaintiff and appellant Edlyn appeals from a judgment in favor of defendant and respondent Dr. Robert Simon. Edlyn contends the trial court erred in sustaining Dr. Simon's demurrer to her elder abuse cause of action, and also erred in granting Dr. Simon's motion for summary judgment under Code of Civil Procedure section 437c as to Edlyn's causes of action for wrongful death and intentional infliction of emotional distress.

Plaintiffs and appellants Celine and Francesca appeal from a separate judgment in favor of defendant and respondent Frumeh Labow, entered after the trial court granted Labow's motion for summary judgment on causes of action for wrongful death and elder abuse. Celina and Francesca contend the court erroneously concluded that Labow, a court-appointed conservator, was protected by quasi-judicial immunity.

Finding no error, we affirm the judgments in favor of Dr. Simon and Labow.

FACTS AND PROCEDURE COMMON TO BOTH APPEALS

The appeals arise from two consolidated lawsuits filed after Beatrice's death.[2] The lead case (*Burk v. Labow* (Super. Ct. L.A. County, 2013, No. BC432426)) was filed by Celine and Francesca alleging wrongful death and elder abuse against several medical facilities and doctors who provided Beatrice's medical care during the final weeks of her

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[1] For clarity, we refer to mother and her three daughters by their first names.

[2] Because this case involves two consolidated cases and multiple claims against multiple parties, we note that portions of the two cases have been previously resolved and appealed (*Burk v. Rehabilitation Centre of Beverly Hills* (Apr. 15, 2014, B245467) [nonpub. opn.] and Case No. B246758), and other portions proceeded to trial and are the subject of a forthcoming appeal, which is still in the briefing stage (Case No. B258372).

life. The complaint also names Edlyn and Labow as defendants in the same causes of action. The consolidated case (*Burk-Soorani v. Simon* (Super Ct. L.A. County, 2013, No. BC437799)) was filed by Edlyn against her sisters Francesca and Celine, Celine's husband Dr. Robert Simon, and various health care providers. We briefly summarize the course of Beatrice's medical care and the ongoing disagreements between the sisters regarding her care, but only to the extent the information is relevant to the issues presented in the current appeals.

Beatrice's Medical Care

In 2003 and 2004, Beatrice saw a number of doctors for various ailments, including gastrointestinal issues, low energy, and unsteadiness. In her eighties at the time, she had a history of thyroid issues, depression, and possible bipolar disorder. She was taking psychotropic and thyroid medications. In October 2004, a colonoscopy revealed colon cancer. Beatrice had surgery to remove the cancer on October 19, 2004, at Providence St. Joseph's Medical Center, where Dr. Simon worked.

On November 2004, Beatrice transferred to Windsor Terrace for rehabilitation and physical therapy. Her medical chart indicates she was seen by Dr. Simon, Dr. Samuel Mogul, and Dr. Lester Zackler, and was becoming more confused and agitated. At times, orders from Dr. Simon and Dr. Mogul would differ, with Dr. Simon increasing the dosage of a medication, and Dr. Mogul later decreasing it.

Beatrice moved to Sunrise Senior Living Santa Monica in January 2005, and then Sunrise Senior Living Beverly Hills in November 2005. Between 2005 and 2008, Beatrice's primary care physician was Dr. Krystina McNicoll. Beatrice also continued seeing Dr. Zackler, who noted her mood would sometimes improve, but her cognition was gradually declining. In January 2008, Dr. Zackler noted that Celine described Beatrice as being paranoid, biting, and screaming. It appeared that Beatrice was cycling through manic symptoms in the context of her dementia, and she appeared psychotic. By February 4, 2008, Dr. Zackler noted that Beatrice's dementia had increased severely and

she was minimally responsive. During 2007 and 2008, Dr. Simon on at least 11 separate occasions was listed as the doctor prescribing various medications to Beatrice.

On February 16, 2008, Beatrice was admitted to Olympia Medical Center, where she was treated for aspiration pneumonia, severe fungal urinary tract infection, and dsyphagia (difficulty swallowing). She was discharged on February 18, 2008, to a skilled nursing facility. In March 2008, Dr. Stephen Read, a geriatric psychiatrist working for court-appointed attorney Clark Byam in the context of a conservatorship proceeding that will be described in more detail later, conducted an independent medical evaluation (IME) of Beatrice and her medical care.

On December 22, 2008, Beatrice was taken by ambulance to Cedars Sinai Medical Center because she had experienced difficulty swallowing the prior week. At Celine's request, Beatrice was discharged from Cedars and transferred to St. Joseph's on December 26, 2008, with a diagnosis of aspiration pneumonia and other medical issues. Her care was managed by Dr. Kelly Yepremian, but she was seen by other doctors as well. On January 8, 2009, Dr. Yepremian considered and agreed to Celine's request to feed Beatrice small purees for oral stimulation.

Dr. Read's second IME report, dated January 26, 2009, describes Beatrice as an 89-year-old woman suffering from progressive, irreversible, and severe dementia, and progressive supranuclear palsy. She had become essentially nonverbal and was unable to follow simple directions from hospital staff, preventing them from conducting swallowing tests to assess whether her pneumonia was caused by aspiration. Dr. Read's report pointed out that Beatrice's dementia exacerbated and complicated other health problems such as depression, urinary tract infections, pneumonia, and swallowing difficulties. He also noted that Beatrice was receiving a form of intravenous nutritional support that it is typically not indicated for long-term use. He found no indication of deliberate neglect or endangerment, but noted that given Beatrice's fragile medical condition, keeping her at an assisted living residence without nursing care and oversight may have exposed her to significant risk of complications and severe illness. He also noted that the continued effort to feed Beatrice orally had exposed her to under-nutrition

and aspiration pneumonia. He recommended placing her in a setting with around-the-clock nursing care, in a program that had experience with patients suffering from advanced dementia.

On February 18, 2009, Beatrice was transferred to the Rehabilitation Centre of Beverly Hills Rehabilitation under the care of Dr. Robert Wang. Nighttime caregiver Johanna David fed her at 1:00 a.m. on February 19, 2009. On February 20, 2009, her blood oxygen levels were low, and she was transferred to Olympia Medical Center. By February 22, 2009, she had developed sepsis, and her condition continued to deteriorate. She was transferred to the intensive care unit (ICU) on February 23, 2009, and on February 25, 2009, the decision was made to place her on palliative care. Dr. Wang discussed Beatrice's situation with a number of family members the evening of February 26, 2009, and Beatrice died at approximately 11:55 p.m. that night. Dr. Wang signed a death certificate listing her cause of death as "overwhelming sepsis."

Ongoing Family Disputes

Beatrice's daughters have a history of family disputes, in particular between Edlyn, on the one hand, and Celine and Francesca, on the other. Since December 2003, Celine was either co-trustee or sole trustee of the "Beatrice Behrendt Burk Living Trust" Although there were several amendments, at the time of Beatrice's death the trust provided that Edlyn would receive a fixed sum of money, rather than a proportionate share of the trust estate. Beginning October 2004, Celine was named as Beatrice's agent for medical decisions in an Advance Health Care Directive, as well as her agent for medical and financial decisions under a general power of attorney.

As early as January 2005, Edlyn sought court intervention to establish a conservatorship over Beatrice's estate and person. In June 2007, Edlyn and her husband visited Beatrice together with a detective, causing Beatrice to become upset and state she did not want future visits from Edlyn. A medical note by Dr. Zackler on February 4, 2008, noted that Beatrice did not wish to have contact with Edlyn.

In September 2008, a judge in the probate court appointed Labow as temporary conservator over Beatrice's estate. After Beatrice was hospitalized with aspiration pneumonia in December 2008, and Celine transferred her from Cedars to St. Joseph's, Edlyn raised concerns about Beatrice's care, prompting Dr. Read's second IME. His first IME was submitted in March 2008.

On February 2, 2009, over opposition from Celine and Francesca, the probate court appointed Labow as temporary conservator over Beatrice's person and granted Labow medical decisionmaking authority. Celine and Francesca felt it would be in Beatrice's best interest to return to Sunrise, but Beatrice's court-appointed attorney Clark Byam argued it would be in her best interest to transfer her to a skilled nursing facility instead, because Sunrise was not equipped to handle patients in Beatrice's condition. Both the court and Byam felt that Labow would be the best choice for a conservator in light of the ongoing family disputes, and Labow indicated that if she were appointed, she would seek to have Beatrice placed in a convalescent facility with a 24-hour registered nurse on staff, probably either Berkley East or Rehabilitation Centre of Beverly Hills. The probate court's order appointing Labow as Beatrice's conservator was filed on February 17, 2009, and the next day Labow had Beatrice admitted to Rehabilitation Centre of Beverly Hills under the care of Dr. Wang.

With the foregoing facts in mind, in Part I of this opinion, we consider Edlyn's appeal from a judgment entered in favor of Dr. Simon, and then in Part II, Celine and Francesca's appeal from a judgment entered in favor of Labow.

STANDARDS OF REVIEW

In reviewing an order sustaining a demurrer, we apply a de novo standard of review. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) "'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable

interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

We review the trial court's decisions granting summary judgment de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612.) A trial court may grant summary judgment where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) "The rules governing a motion for summary judgment are well known and we need not set them out in detail. A defendant seeking summary judgment must either prove an affirmative defense, disprove at least one element of the plaintiff's cause of action, or show that some such element cannot be established. [Citation.]" (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 100.) "[O]nce a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .' (Code Civ. Proc., § 437c, subd. (o)(2); *see Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.)

PART I--FACTUAL AND PROCEDURAL BACKGROUND

First Amended Complaint and Demurrer

Edlyn's first amended complaint alleged five causes of action against Dr. Simon: wrongful death, an accounting, intentional infliction of emotional distress, and two causes of action for elder abuse. After extensive briefing on the question of who had standing to pursue elder abuse claims on Beatrice's behalf, the trial court sustained Dr. Simon's demurrer to Edlyn's two causes of action for elder abuse for lack of standing.[3]

Dr. Simon's Motion for Summary Judgment and Supporting Evidence

Dr. Simon later filed a motion for summary judgment challenging the causes of action for wrongful death and intentional infliction of emotional distress.[4] Relying primarily on an expert declaration and deposition testimony, Dr. Simon argued summary judgment was warranted on the wrongful death cause of action because there was no evidence to support a finding of duty, breach, or causation, all elements necessary to prevail on a wrongful death cause of action. He also sought summary judgment on the intentional infliction of emotional distress claim on the grounds that his conduct was not extreme or outrageous, and even if the court considered it to be extreme or outrageous, it did not cause Edlyn emotional distress.

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[3] Most of the briefing on the question of standing was submitted by Edlyn and Celine, but the court's decision that Edlyn lacked standing applied to all defendants (including Simon) named in Edlyn's elder abuse causes of action.

[4] The motion relates to Edlyn's fourth amended complaint. Although that complaint was not designated by Edlyn on appeal, on May 22, 2014, we granted Simon's motion to augment the record on appeal, augmenting the record with a compact disc containing the fourth amended complaint and other documents Simon had filed in the trial court in support of the motion for summary judgment.

Opposition and Supporting Evidence

Edlyn opposed the motion for summary judgment, arguing Dr. Simon had omitted evidence creating triable issues of material fact for each element of her wrongful death cause of action, and that the evidence demonstrated Dr. Simon's conduct on the night of Beatrice's death was extreme and outrageous, and that the question of causation was one for a jury to decide. The opposition attached a declaration from Dr. Michael Blumenkrantz, which included a signature page, but not a statement that it was made under penalty of perjury. Dr. Blumenkrantz's declaration was also missing about 16 pages, skipping from page 9 to 25, and from paragraph 46 to 131.

Dr. Simon's Reply

Dr. Simon's reply pointed out that Edlyn's opposition violated the statutory requirements for summary adjudication, failing to identify any disputed facts or cite to any evidence in opposition to summary adjudication as to the wrongful death cause of action. The reply pointed out the inadequacies of Dr. Blumenkrantz's declaration, noting that the declaration did not address the elements of breach or causation. Dr. Simon also made separate evidentiary objections to Dr. Blumenkrantz's declaration.

Hearing and Summary Judgment

At the hearing on Dr. Simon's motion for summary judgment, the court stated that Edlyn's expert's declaration was not signed under penalty of perjury and was conclusory, and there was no triable issue on the question of causation for the wrongful death claim. The final order concluded that Dr. Simon had met his initial burden, and Edlyn had failed to submit admissible evidence on the issues standard of care, breach, and causation. The court also observed that if the declaration's defects were corrected, it "fails to explain

what [Dr. Simon] did or failed to do that caused or contributed to decedent's death." The court also found that Edlyn failed to provide admissible evidence showing a disputed factual issue on her intentional infliction of emotional distress claim.[5] To the extent there was evidence Dr. Simon charged at Edlyn after Edlyn accused him of stealing from Beatrice, that conduct would not support a claim for intentional infliction of emotional distress.

PART I--DISCUSSION

Standing to Bring Elder Abuse Claim

The trial court correctly sustained Dr. Simon's demurrer to Edlyn's elder abuse causes of action. As a matter of law, Edlyn lacked standing to pursue those claims on behalf of her deceased mother because she was not an "interested person" under subdivision (d)(1)(C) of Welfare and Institutions Code section 15657.3. (*Lickter v. Lickter* (2010) 189 Cal.App.4th 712, 717 (*Lickter*).)

After the death of an individual protected by the elder abuse statutes, the right to commence or maintain an action for elder abuse rests with the decedent's personal representative. (Welf. & Inst. Code, § 15657.3, subd. (d)(1).) However, "[i]f the personal representative refuses to commence or maintain an action or if the personal representative's family . . . is alleged to have committed abuse of the elder," then the statute describes several categories of individuals who may commence or maintain such an action. (*Id*., subd. (d)(2).) Among the categories listed is "[a]n interested person, as

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[5] Although the court's order states that the court considered a separate statement in which Edlyn disputed specific facts but failed to cite to admissible evidence to support her position, the record on appeal does not contain Edlyn's separate statement.

defined in Section 48 of the Probate Code[.]" (*Id.*, subd. (d)(1)(C).)[6] Section 48[7] of the Probate Code defines "interested person" as including "[a]n 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."

Edlyn contends she is an "interested person" under section 48, and therefore has standing to bring an elder abuse cause of action. The court, following *Lickter*, found she lacked standing because she did not have a claim against Beatrice's estate that would be affected by the elder abuse claim. *Lickter, supra,* 189 Cal.App.4th at pages 716, 723, involved a decedent's grandchildren as plaintiffs seeking to bring elder abuse claims against other relatives including their father, who was trustee of the decedent's trust. Plaintiffs argued that because they were entitled to receive a fixed sum under the trust, they were beneficiaries entitled to standing under section 48. (*Id*. at pp. 724-725.) The Court of Appeal rejected their argument, concluding that an individual is only an "interested person" for purposes of standing if he "has an interest of some sort that may be impaired, defeated, or benefited by the proceeding at issue." (*Id*. at p. 728.) Because the trust contained enough assets to pay plaintiffs the money to which they were entitled, they had no "interest" in the decedent's estate that could be negatively or positively affected by the elder abuse claim. (*Id*. at pp. 729-730.) The court rejected plaintiffs' argument that under the "last antecedent" rule of statutory construction, only "any other person" was required to show a property right affected by the proceeding, and that the earlier categories of persons listed in section 48, including beneficiaries, did not need to make such a showing. Instead, the court relied on an exception to the last antecedent rule, applying the descriptive clause at the end of a list to all items listed before the descriptive clause. (*Id.* at pp. 726-727.) The court also rejected plaintiffs' argument,

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[6] The definition of "interested person" in Welfare and Institutions Code, section 15657.3, subdivision (d)(1)(C), excludes "a creditor or a person who has a claim against the estate and who is not an heir or beneficiary of the decedent's estate" but that exclusion is not relevant to our discussion.

[7] All further statutory references are to the Probate Code, unless otherwise stated.

based on reasoning and language from *Estate of Lowrie* (2004) 118 Cal.App.4th 220, at pages 230-231, that a broad interpretation of standing is necessary to further the policy underlying the Elder Abuse Act, to deter, not encourage, elder abuse. (*Lickter, supra*, at pp. 730-732.)

Repeating the arguments made by the appellants in *Lickter*, Edlyn contends the last antecedent rule should not apply to interpreting the definition of an "interested person" under section 48 and that public policy favors a more expansive definition of who has standing to bring an elder abuse claim. For all the reasons articulated in *Lickter*, we reject Edlyn's arguments. Edlyn also attempts to distinguish *Lickter*, because here a possibility existed that the trustee of Beatrice's trust might attempt to invoke a no-contest clause to reduce Edlyn's right to a fixed sum from the trust proceeds, in contrast to the *Lickter* plaintiffs, who had already prevailed on a no-contest challenge. (*Lickter, supra*, 189 Cal.App.4th at p. 730.) We find this argument speculative and unpersuasive, particularly because the lower court had already requested additional briefing on the question of standing before making its ruling, and was familiar with the ongoing probate case as well. We affirm the order sustaining the demurrer to Edlyn's the elder abuse claims.

Summary Judgment on Wrongful Death Cause of Action

Edlyn makes two contentions regarding the trial court's order granting Dr. Simon's motion for summary judgment on her wrongful death claim. First, she contends Dr. Simon did not demonstrate the absence of any conflicting evidence on every material fact necessary to succeed on her wrongful death claim. Next, she contends the trial court erroneously refused to consider her expert's declaration, despite the fact that it was not signed under penalty of perjury and was missing pages at the time it was filed.

"The elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the pecuniary loss suffered by the heirs. [Citations.]" (5 Witkin, Cal. Procedure (5th ed. 2008) Pleading,

§ 938, p. 352.) "To prevail on [an] action in negligence, plaintiff must show that defendants owed [him or] her a legal duty, that they breached the duty, and that the breach was a proximate or legal cause of [his or] her injuries. [Citation.]" (*Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1188, disapproved on other grounds in *Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 853, fn. 19.)

In order to prevail against Dr. Simon's motion for summary judgment on her wrongful death claim, Edlyn needed to provide the court with admissible evidence demonstrating there was a triable issue of fact as to each element that Dr. Simon had disproven. The trial court found Edlyn had not provided admissible evidence showing causation, and we agree. Viewed in the light most favorable to Edlyn, Dr. Simon was a physician who was directly involved in Beatrice's medical care in 2004, and wrote medication prescriptions for Beatrice as recently as May 2008. However, the evidence also reveals that numerous doctors were involved in Beatrice's care, and several were named as defendants on wrongful death claims in connection with their participation in her care. There is no evidence in the record that Dr. Simon was involved in the decision to hospitalize her for aspiration pneumonia in December 2008, or that he made any medical decisions regarding her care while she was hospitalized at St. Joseph's in late 2008. Edlyn's brief on appeal and her opposition to the summary judgment motion imply that Dr. Simon was somehow operating "behind the scenes" by directing actions taken by Dr. Yepremian and Dr. Zackler, but those inferences are not supported by any evidence in the record. In contrast, by February 2009, Dr. Simon had no role in any medical decisions, because a court-appointed conservator was empowered to make all decisions regarding Beatrice's health care, including selecting independent doctors and facilities. Beatrice died of overwhelming sepsis, and there simply is no evidence to support any inference of a causal link between Dr. Simon's role in Beatrice's health care several years earlier, and her death.

We further conclude the court did not err when it refused to give Edlyn additional time to correct the defects in her expert's declaration. Self-represented litigants are held to the same legal standards as those represented by counsel. (*Rappleyea v. Campbell*

(1994) 8 Cal.4th 975, 984 ["mere self-representation is not a ground for exceptionally lenient treatment"].) Edlyn failed to submit a complete declaration that met the legal requirements for admissible evidence, and does not provide any evidence on appeal demonstrating that the outcome would have been any different if she had been permitted to correct her mistakes.

Summary Judgment on Intentional Infliction of Emotional Distress Claim

To prevail on a cause of action for intentional infliction of emotional distress, a plaintiff must prove (1) extreme and outrageous conduct the defendant either intended to cause or recklessly disregarded the probability of causing, emotional distress; (2) severe or extreme emotional distress; and (3) actual and proximate causation. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.) "A defendant's conduct is 'outrageous' when it is so '"'extreme as to exceed all bounds of that usually tolerated in a civilized community.'"' [Citation.] And the defendant's conduct must be '"'intended to inflict injury or engaged in with the realization that injury will result.'"' [Citation.] [¶] Liability for intentional infliction of emotional distress '"does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." [Citation.]' [Citations.] . . . [¶] . . . 'Severe emotional distress means "'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'"' [Citation.]" (*Id.* at pp. 1050-1051.)

The conduct that forms the basis for Edlyn's intentional infliction of emotional distress claim took place on the last day of Beatrice's life, after all three sisters agreed with Dr. Wang that Beatrice would be transitioned to palliative care. According to Edlyn, the conservator had mandated that each of the sisters would get private time with their mother, and the family had agreed to wait until 8:00 p.m. to remove Beatrice's breathing mask, so that Edlyn's husband (who was detained at work) would have time to get to the hospital and say his goodbyes. Instead, around 6:00 p.m., Dr. Simon told hospital staff that all family members were present and had Beatrice's breathing mask

removed. Edlyn's testimony acknowledges she did not know whether Dr. Simon removed Beatrice's breathing mask, that she was not in the room when the mask was removed, and that she did not see Beatrice after the removal occurred. She knew her mother was close to death, and while the actions of Dr. Simon and other family members can certainly be characterized as insensitive and unfeeling, we agree with the trial court that it did not rise to the level of "extreme and outrageous" conduct needed to proceed to trial on a claim for intentional infliction of emotional distress. Therefore, the court correctly granted summary judgment.

PART II--FACTUAL AND PROCEDURAL BACKGROUND

First Amended Complaint

Celine and Francesca sought recovery from Labow based on two causes of action: wrongful death and elder abuse. Their first amended complaint alleged: Labow and Edlyn conspired to remove Beatrice from her existing health care providers and assume control over her person in order to eventually obtain control and ownership over Beatrice's substantial estate. After unsuccessfully seeking to remove Celine as trustee of Beatrice's trust, Edlyn petitioned the probate court and obtained an order appointing Labow as Beatrice's conservator. Labow and the other defendants allegedly acted with willful and wanton negligence and in total breach of their fiduciary duties to Beatrice, so neglecting and ignoring her medical needs that they forseeably brought about her untimely death. Labow selected medical service providers who were loyal to her, and breached her fiduciary duty to ensure that the individuals she selected provided proper and necessary medical care to Beatrice.

The negligence/wrongful death cause of action alleged Labow failed to select a competent medical and nursing staff, or to monitor and periodically review the staff's competency, and such failures directly and proximately caused Beatrice's death on

February 26, 2009. Labow's purported negligence included "negligently and carelessly feeding and supervising [Beatrice] such that she choked to death."

The elder abuse cause of action alleged Labow owed Beatrice, a dependent elder adult, a fiduciary duty to provide for her medical care and to care for her daily needs. Her medical providers—also defendants named in the first amended complaint—failed to follow the nursing plan of care and instead fed Beatrice solid food without adequate supervision. They failed to determine whether Beatrice had aspirated her food, and failed to assist her beyond calling 911. They also delayed placing Beatrice in the proper hospital ICU ward.

Labow's Motion for Summary Judgment and Supporting Evidence

Labow filed a motion for summary judgment arguing she was protected by quasi-judicial immunity because she was fulfilling adjudicatory functions that were intimately related to the judicial process. Alternatively, if she was not protected by quasi-judicial immunity, there was no evidence of a causal connection between her actions as Beatrice's conservator and Beatrice's death, which was attributed to overwhelming sepsis.

Labow supported her motion with a declaration explaining she had not advocated for an appointment to act as Beatrice's conservator, and permitted the court to make its own determination, based on the recommendations of court-appointed investigators and court-appointed counsel for the proposed conservatee. She summarized her past experience with Dr. Wang, a gerontologist, and Rehabilitation Centre of Beverly Hills, as well as the reasons for her decision to transfer Beatrice to Rehabilitation Centre of Beverly Hills once her letters of appointment were approved by the court. Finally, she explained that Celine had requested that Beatrice be fed pureed food, and she (Labow) had agreed to do so with Dr. Wang's consent. Labow stated that both of Beatrice's caregivers, Beth Zaide and Johanna David, were trained in feeding elderly patients with swallowing difficulties. Labow's summary judgment motion was also supported by the probate court's order appointing her as Beatrice's conservator, a transcript of the

conservatorship hearing, Dr. Read's IME report, letters Labow had sent to Celine and Francesca, and Beatrice's death certificate.

Opposition and Supporting Evidence

Celine and Francesca's opposition to Labow's motion for summary judgment argued that Labow was not entitled to quasi-judicial immunity, relying on *Susan A. v. County of Sonoma* (1991) 2 Cal.App.4th 88, 97-98, where the court denied such immunity to a psychologist retained by the public defender. They also argued Labow's conduct fell short of the applicable standard of care for conservators and she hired a caregiver who lacked adequate training. The opposition was supported by several declarations and other documents. A declaration by Dr. Irene Keenan opined that Labow's conduct fell below the standard of care for conservators, pointing specifically to Labow's failure to obtain and review Beatrice's medical records before having her transferred from St. Joseph's to Rehabilitation Centre of Beverly Hills, as well as her decision to hire a new caregiver who needed additional training in how to feed someone with swallowing difficulties. A declaration by Dr. Edward Schneider states the opinion that the sepsis that led to Beatrice's death "was caused by the aspiration pneumonia that Ms. Burk acquired by aspirating food at Rehabilitation Center [*sic*] of Beverly Hills."

Hearing and Judgment

At the hearing on Labow's motion for summary judgment, the court concluded Labow was entitled to quasi-judicial immunity, stating "Ms. Labow was well within the reasonable discretion that the court would have expected her . . . to exercise after her appointment. And that, therefore, her activities were part of a quasi judicial function, and therefore, entitled to immunity." There is no indication on the record whether the court ruled on any evidentiary objections made by either party, but at the hearing the court stated, "I just don't see any conduct that is alleged that Ms. Labow did with any

admissible evidence indicating that it caused or contributed to the death of Ms. Burk." Judgment was entered in favor of Labow.

PART II--DISCUSSION

Quasi-Judicial Immunity

Celine and Francesca contend Labow is not protected by quasi-judicial immunity, and even if some conservators may be protected, no case has found the immunity to apply in the medical decision-making context. Three cases explain the scope of quasi-judicial immunity and lead to the conclusion that the doctrine protects Labow, as a court-appointed conservator authorized to make medical decisions for Beatrice, from the wrongful death and elder abuse claims asserted by Celine and Francesca.

Howard v. Drapkin (1990) 222 Cal.App.3d 843 (*Howard*) is a seminal case examining the doctrine of quasi-judicial immunity under California law. In *Howard*, the plaintiff and her former husband stipulated that an independent psychologist would conduct an evaluation and make non-binding recommendations to the court in a child custody dispute. The plaintiff later filed suit against the psychologist, alleging the psychologist was abusive during the evaluation and that the report was negligently prepared and included false statements. (*Id.* at p. 848.) The *Howard* court concluded the psychologist was protected by quasi-judicial immunity and affirmed an order sustaining a demurrer. (*Id.* at p. 864.) In reaching its conclusion, the court reviewed the doctrine of judicial immunity, which "bars civil actions against judges for acts performed in the exercise of their judicial functions[.]" (*Id.* at p. 851.) It next turned to the doctrine of quasi-judicial immunity, which "extended absolute judicial immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity." (*Id.* at pp. 852-853.) "As with the reason for granting judicial immunity, quasi-judicial immunity is given to promote uninhibited and independent decisionmaking. [Citation.]" (*Id.* at p. 853.) A wide array of persons are protected by the doctrine of quasi-judicial immunity,

including those acting in a judicial capacity, such as court commissioners, grand jurors, administrative hearing officers, and arbitrators. (*Ibid*.) Federal cases had already extended quasi-judicial immunity to persons who were not public officials, but whose work was used by the court, regardless of whether they were court-appointed. (*Howard*, *supra,* 222 Cal.App.3d at pp. 855-856 [discussing immunity for trust officers, conservators, receivers, guardians ad litem, psychologists, and attorneys for children in child abuse cases].) Because the overburdened judicial system must attract independent and impartial services and expertise to function, the *Howard* court considered it necessary "that these 'nonjudicial persons who fulfill quasi-judicial functions intimately related to the judicial process' [citation] should be given absolute quasi-judicial immunity for damage claims arising from their performance of duties in connection with the judicial process. Without such immunity, such persons will be reluctant to accept court appointments or provide work product for the courts' use. Additionally, the threat of civil liability may affect the manner in which they perform their jobs. [Citation.]" (*Id.* at p. 857.)

Falls v. Superior Court (1996) 42 Cal.App.4th 1031, 1044 (*Falls*) established that a prosecutor is protected by quasi-judicial immunity, so long as the prosecutor's conduct "is an '"integral part of the judicial process"' or 'intimately associated with the judicial phase of the criminal process.' [Citation.]" The prosecutor must be acting within his official capacity, and immunity would not apply to acts that fall outside of his or her official role. In *Falls*, the district attorney interviewed and called as a witness a young man who was later shot by a member of the gang he had testified against. The court concluded that because the prosecutor was acting in his official capacity in interviewing a witness and calling the witness to testify at trial, quasi-judicial immunity protected him from civil liability for the witness's death. (*Id*. at pp. 1043-1045.)

A more recent case, *McClintock v. West* (2013) 219 Cal.App.4th 540, 549-550 (*McClintock*), established that quasi-judicial immunity also protects guardians ad litem (GALs) from liability for actions within the scope of that court-appointed role. *McClintock* involved divorce proceedings in which the court appointed a GAL to act on

behalf of a father who had been hospitalized for depression. The GAL made decisions regarding the division of assets and child custody, and the father later sued, claiming the GAL's actions led to the loss of financial assets and custody rights with respect to his children. Father argued that his GAL was not entitled to quasi-judicial immunity because she was not acting as a neutral, but rather was tasked with making decisions on his behalf. The *McClintock* court instead examined whether the GAL's role was "'"intimately related to the judicial process"' (*Howard*, *supra*, 222 Cal.App.3d at p. 857.)" (*McClintock*, *supra*, at p. 551.) Because the GAL was a court-appointed officer acting under the trial court's supervision, her role was related to the judicial process and she was therefore entitled to quasi-judicial immunity. (*McClintock*, *supra*, at pp. 551-553.) The policy considerations stated in *Howard* weighed strongly in favor of finding quasi-judicial immunity in *McClintock*. The court questioned whether any qualified person would accept appointment as a GAL knowing he or she would be subject to post hoc second-guessing and potential "liability for causes of action ranging from negligence to intentional interference with prospective economic advantage, resulting in the potential for years of litigation and financial liability greater than her entire fee for handling the case . . . ." (*Id.* at p. 551.) The court also noted the risk of litigation or liability would impact any GAL's ability to carry out the duties for which he or she was appointed. However, quasi-judicial immunity does not leave GALs completely unaccountable. Rather, GALs must still act within their scope of authority, and are both appointed by and supervised by the court, and subject to removal if they are not carrying out their duties in a responsible manner. (*Id.* at p. 552.)

The reasoning in *Howard*, *Falls*, and *McClintock* persuades us that a court-appointed conservator who acts within the scope of his or her appointment is protected by quasi-judicial immunity. The gravamen of a conservatorship proceeding is a concern that the proposed conservatee is no longer capable of making decisions that are in her best interests. A court may empower a conservator to make health care decisions, but the court is required to make specific findings before doing so, and the Probate Code places strict limitations on how the conservator may exercise that authority. **(**§§ 1880, 2355.)

Separate requirements apply if the conservatee has dementia. (§ 2356.5.) In appointing Labow as conservator over Beatrice and granting her medical decisionmaking authority, the probate court found that there was a pressing need for a neutral third party to make decisions regarding Beatrice's medical care. Labow clearly articulated to the probate court her plan to transfer Beatrice to Rehabilitation Centre of Beverly Hills and place her under Dr. Wang's care. She also obtained the court's permission to continue to use Dr. Read for treatment. The court's order appointing Labow as Beatrice's conservator revoked all prior powers of attorney for health care and granted Labow "all the responsibilities, rights, authority and powers as a General Probate Conservator, including but not limited to" authority to make health care decisions as specified in section 2355, power to authorize medications for the care and treatment of dementia under section 2356.5, and authority to determine where Beatrice should be placed, after consulting with court-appointed counsel and Dr. Read, and after notifying family members of the placement decision. The scope of her authority was broad, but very well-defined.

Plaintiffs argue that they disagreed with Labow's decisions, voiced their objections, but were ignored. What plaintiffs did not present was admissible evidence that Labow exceeded her authority as conservator. To deny Labow immunity in a situation like this would discourage any qualified professional conservator from accepting court appointments in cases where family members disagree about medical decisionmaking, thus denying the incapacitated person any protection from the state. Indeed, the *McClintock* court presumed that a conservator would be so protected, and pointed out that, "The guardian ad litem, therefore, when representing an adult deemed incapable of representing themselves, is in a similar role to a conservator, who derives his or her authority from the power of the state to protect incompetent persons. (See, e.g., *Young v. CBS Broadcasting, Inc.* (2012) 212 Cal.App.4th 551, 562.)" (*McClintock, supra,* 219 Cal.App.4th at pp. 549-550.)

Had there been no petition and no court involvement, Labow would have had no role in Beatrice's care. Her decisions were directly the result of her court appointment, and all the reasons discussed in *McClintock* weigh in favor of finding immunity here.

Under the position advocated by Celine and Francesca, any conservator would be subject to second-guessing when a conservatee takes a turn for the worse, regardless of the quality of the care provided. This specter of litigation would deter all but the most foolhardy from ever accepting a court appointment. Just as in *McClintock*, there is no dispute about whether Labow's actions were within the scope of her court appointment, and the conservatorship proceeding and related statutes provide adequate supervision and protections against a conservator who might take action that is outside the bounds of her authority. The evidence established the court was aware of Labow's intended course of action, as she had outlined it in detail at the hearing. The court was also aware of the sisters' objections to placing Beatrice anywhere other than Sunrise, a facility both Dr. Read and Labow considered inadequate to meet Beatrice's needs. When Labow followed through with the course of action outlined to the court, it is beyond question that she was acting within the scope of her appointment.

The lack of any published opinion extending quasi-judicial immunity to court-appointed conservator with medical decisionmaking authority does not mean that conservators are not protected by such immunity. So long as the letter of appointment delineates the conservator's powers and duties, and those include medical decisionmaking, then the conservator is entitled to quasi-judicial immunity. To conclude otherwise would render meaningless the sections of the Probate Code that permit the court to appoint a conservator to make medical decisions or exercise statutory powers to care for a person with dementia.

Causation

Celine and Francesca contend the trial court erroneously found Labow had carried her burden of proving no triable issues on every element of their elder abuse and wrongful death causes of action, including causation. Because we conclude that Labow is entitled to quasi-judicial immunity, we need not discuss whether there was a triable issue of material fact on the element of causation.

DISPOSITION

The judgment in favor of Dr. Simon is affirmed, and costs on appeal are awarded to Dr. Simon. The judgment in favor of Labow is also affirmed, and costs on appeal are awarded to Labow.

KRIEGLER, J.

We concur:

TURNER, P. J.

GOODMAN, J. *

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