

Tentative Ruling

Case Name: *The Estate of Asha Sharma*

Case No.: 24PR197332

Hearing date, time, and department: January 29, 2025, at 10:00 a.m. in Department 1

INTRODUCTION

On June 5, 2024, Petitioner Ankur Sharma (“Petitioner”) initiated this case, filing a petition for letters of administration for the estate of Asha Sharma (“Decedent”), his mother. He filed an amended petition on June 25, 2024. Also on June 5, 2024, Petitioner filed a document entitled “Will Contest” (“June 5, 2024 Will Contest petition”).

On September 19, 2024, Petitioner filed a document entitled, Contest of Appointment of Personal Representative; Will Contest and Ground of Opposition to Probate of Purported Will (Probate Code § 6100.5, § 1002, § 6110, § 6104, § 8402(a)(3), § 8001, § 8004). That petition alleges causes of action for (1) lack of testamentary capacity, (2) lack of intent to create will, (3) lack of due execution, (4) fraud and undue influence, (5) removal of personal representative for fraud, (6) removal of personal representative for conflict of interest, (7) untimely opening of probate against Decedent’s surviving spouse, Vishnu Sharma (“Respondent”).

On November 20, 2024, Petitioner filed a document entitled, “Amended Contest: Opposition to Probate of Purported Will; Contest of Appointment of Personal Representative” (“November 20, 2024 Amended Petition”). The November 20, 2024 Amended Petition separates itself into 10 “grounds”, which can be summarized as follows: (1) elder abuse of Decedent, (2) breach of fiduciary duty, (3) fraud in procuring Decedent’s 2023 will, (4) Medi-Cal fraud, (5) conflict of interest, (6) undue influence in procuring the 2023 will, (7) lack of due execution of 2023 will, (8) lack of testamentary capacity at the time the 2023 will was signed, (9) lack of intent that the 2023 will be Decedent’s will, (10) the petition to open probate filed by Respondent is invalid. The court ordered this petition stricken as an amended petition filed without leave of court.

Five motions have been calendared for the hearing date of January 29, 2025. These are: (1) a motion for judgment on the pleadings by Respondent, (2) a motion to compel filed by Petitioner, (3) a motion for leave to amend filed by Petitioner, (4) a motion by Petitioner to strike Respondent’s response to Petitioner’s petition, and (5) and a motion to redact filed by Petitioner.¹

DISCUSSION

¹ Petitioner also filed a motion to strike Respondent’s motion for judgment on the pleadings. However, that motion is not on calendar and Petitioner served on Respondent a notice of withdrawal of that motion via the court’s e-filing system on January 13, 2025. The notice of withdrawal was never filed. Nonetheless, that motion is not before the court.

I. Motion for Judgment on the Pleadings²

As mentioned above, in a prior order of this court, the court determined that Petitioner's operative will contest petition was the one filed on September 19, 2024. The September 19, 2024 petition alleges causes of action for (1) lack of testamentary capacity, (2) lack of intent to create will, (3) lack of due execution, (4) fraud and undue influence, (5) removal of personal representative for fraud, (6) removal of personal representative for conflict of interest, (7) untimely opening of probate. Respondent moves for judgment on the pleadings based on the allegations made in that petition. He asserts that Petitioner lacks standing to bring all seven claims because he is not an interested person within the meaning of Probate Code section 48. Specifically, Respondent contends that, although Petitioner is Decedent's son and would be an intestate heir, Petitioner was disinherited under Decedent's 2023 will and her prior 2015 will.³ Thus, even if Petitioner were to successfully challenge the 2023 will with his will contest, the 2015 will would still disinherit Petitioner.

Probate Code section 48, subdivision (a) provides, in pertinent part, "Subject to subdivision (b), 'interested person' includes any of the following: (1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding." Probate Code section 48, subdivision (b) provides, "The meaning of 'interested person' as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding."

Petitioner asserts that he has standing to challenge the 2023 will as the executor named in the 2015 will. Without citing to any particular page therein, he contends that this argument is supported by *Jay v. Superior Court* (1970) 10 Cal.App.3d 754 (*Jay*), which he asserts acknowledged that an executor with no pecuniary interest in the estate can challenge a later will. The court finds that *Jay* does not support Petitioner's standing argument.

In *Jay*, an executor of a prior will that had not been admitted to probate sought to challenge the probate of a later will of the decedent. He asserted that he had standing to contest the later will due to being named as executor in the prior will. The *Jay* court explained, "It appears to be well settled in this state that an executor who is named in a will which has been offered for probate, or which has been admitted to probate, has the right to oppose or resist a contest to such will. [Citations.]" (*Jay, supra*, 10 Cal.App.3d at p. 758.) The court also

² On January 27, 2025, Petitioner filed a declaration in support of his opposition to Respondent's motion for judgment on the pleadings. The court declines to consider the late-filed declaration. (See § 1005, subd. (b) [opposition is due nine court days before the hearing on the motion]; Cal. Rules Ct., rule 3.1300(d) [court may decline to consider late-filed paper].)

³ The court grants Respondent's request for judicial notice of the 2023 will and, on its own motion, takes judicial notice of the 2015 will, which is attached to Respondent's November 7, 2024 response to Petitioner's September 19, 2024 will contest. The wills both indicate that the sole beneficiary of Decedent's estate is her trust.

acknowledged, “[i]t has also been held in California that an executor could also contest a subsequent will, even though he had no beneficial interest in the estate. [Citations.] The right is not based upon any pecuniary interest of the executor in the devolution of the estate, but rather upon the theory that he represents those who would be entitled to the estate under the will in which he is named as executor, and, in a representative capacity, he has the right to see that the testator’s wishes are not thwarted by admission to probate of a testamentary paper which is not genuine.” (*Ibid.*) But, the court explained, “[w]hile a beneficiary under an earlier will may contest a later one without first obtaining probate of the former, [citation], *he may not do so if his pecuniary interest in the devolution of the property would not be affected or impaired by the later will or codicil.* [Citation.]” (*Ibid.*, italics added.) Further, the *Jay* court explained, “[a]n heir at law of the decedent is not necessarily a ‘person interested,’ and may be without the right to petition for revocation of a will by reason of other facts which show he has no direct pecuniary interest which will be affected by the probate of the will. [Citations.]” (*Ibid.*) The *Jay* court stated, “in the instant case, petitioner’s only legal interest in the estate is in serving as executor and receiving administration fees for such services. It is not shown wherein the object and intent of the testator will be thwarted by the provisions of the Second Codicil. Under court supervision, the property must be distributed in accordance with the provisions of the will whether the co-executor is the widow or petitioner.” (*Id.* at p. 759.) Thus, the court concluded that the executor of the prior will was not an interested person. (*Ibid.*)

Here, similarly, both the 2015 will and the 2023 will provide that the sole beneficiary is Decedent’s trust. While the 2015 will named Decedent as an alternate executor, it did not provide Petitioner with a pecuniary interest in the estate. Thus, as in *Jay*, Petitioner’s only legal interest in the estate is to serve as the administrator. Petitioner has not shown that the dispositive provisions of the will have changed as between the 2015 and 2023 wills such that Decedent’s intent would be thwarted by the provisions of the 2023 will. Regardless of who is named as the executor, the estate assets are to be distributed to the sole beneficiary, Decedent’s trust.

Petitioner contends that the fact that this case raises elder abuse issues supports his position that he has standing to raise his claims. But, the September 19, 2024 will contest raises no elder abuse claims. Instead, the only claims Petitioner raises in that petition challenge the will and seek to remove the personal representative. Accordingly, Petitioner’s arguments based on the elder abuse statutes are without merit.

Petitioner also appears to assert that he has standing to pursue his petition because he is a beneficiary of Decedent’s trust. But, again, the September 19, 2024 petition contains no allegation that Petitioner is a beneficiary of Decedent’s trust and neither party has provided a copy of the trust to the court in connection with the instant motion. Further, even if Petitioner is a beneficiary of Decedent’s trust, a beneficiary of a trust is not an interested person under “subdivision (d)(1)(C) of Welfare and Institutions Code section 15657.3 and subdivision (a)(1) of Probate Code section 48 if the elder abuse action the person seeks to commence or maintain will have no effect on the person’s beneficial interest in the trust[.]” (*Lickter v. Lickter* (2010) 189 Cal.App.4th 712, 725.) In other words, “to pursue such an action as a ‘beneficiary’ of the elder’s trust, the beneficiary must have ‘a property right in or claim against [the] trust estate ... which may be affected by the’ elder abuse action. (*Id.* at p. 728.)

Petitioner does not explain how the claims in the September 19, 2024 petition would have any effect on any interest he may have in the trust estate. Notably, Petitioner contends that he is entitled to one half of the trust estate but his claims in the petition seek to invalidate the 2023 will, which leaves the entirety of the estate to Decedent's trust. If the 2023 will were invalidated, it appears that the parties agree that the terms of the 2015 will also provided that the entirety of Decedent's probate estate would be transferred to her trust upon her death. The September 19, 2024 petition also contains causes of action attempting to remove the personal representative. However, again, it is not clear how Petitioner's purported interest in the estate could be affected by the identity of the personal representative.

The court finds that Petitioner lacks standing to assert his claims to invalidate the 2023 will. Thus, the motion is GRANTED as to the first through fourth cause of action, which seek to invalidate the 2023 will. Because Petitioner has not shown how he can amend to allege that he does have standing, the motion is GRANTED WITHOUT LEAVE TO AMEND as to the first through fourth causes of action in the September 19, 2024 petition. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 411 ["Plaintiffs have the burden to show how they could further amend their pleadings to cure the defects. [Citation.]".])

Respondent does not make any argument that Petitioner lacks standing to contest Respondent's attempt to seek appointment as the personal representative. Respondent confirms that he is not seeking to invalidate any other claims Petitioner has brought: "As stated, the Motion is solely focused on Ankur's standing to pursue a will contest. It does not address any other claims may have brought, or may later bring, including elder abuse." (Reply, p. 3:19-20.) Accordingly, the court will grant the motion for judgment on the pleadings as to causes of action 1 through 4 in the September 19, 2024 petition. To the extent the motion is targeting causes of action 5 through 7, which seek removal of Respondent as the personal representative, the motion is DENIED as Respondent makes no argument as to those causes of action.⁴

II. Motion to Strike

Petitioner moves to strike "pleadings and portions of" Respondent's November 7, 2024 opposition to Petitioner's September 19, 2024 petition pursuant to section 436. At the outset, the court DENIES Petitioner's request for judicial notice of certain court documents under Evidence Code section 452, subdivision (d). The court notes that the court documents attached to the request for judicial notice are altered from their original form. Pages are clear missing from the documents.

Section 436 provides in its entirety, "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Formatting altered.)

⁴ The court notes that Respondent has not been appointed as the personal representative. However, the court will consider the fifth through seventh causes of action as objections to Respondent's petition seeking to be appointed as personal representative.

Petitioner contends that portions of Respondent's November 7, 2024 response conflict with other verified pleadings filed by Respondent. Specifically, he asserts that paragraph 10 of the response misconstrues the provisions of the 2015 will. However, the will speaks for itself and the court declines to strike paragraph 10 or any portion thereof from the November 7, 2024 response. The court's decision to strike the petition pursuant to section 436 is discretionary. (See § 436 ["The court may . . . strike"]; see also *Colden v. Broadway State Bank* (1936) 11 Cal.App.2d 428, 429 [motion to strike is addressed to the sound discretion of the court].) A motion to strike should be applied cautiously and sparingly because it is used to strike substantive defects. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.)

Petitioner also maintains that the response was served after the hearing date set for his petition filed September 19, 2024. He asserts that he did not receive the response until November 13, 2024 when the hearing on this matter was set for November 8, 2024. Under other circumstances, the court might find this argument persuasive. However, here, the case is not currently set for trial and Petitioner has filed multiple amendments and documents that could be construed as petitions for relief. Petitioner points to no prejudice in the fact that the response may have been filed after the November 8, 2024 hearing.

Petitioner further argues that the title of the response is incorrect and, therefore, the pleading must be stricken. Petitioner cites no authority for this proposition. The court declines to strike the November 7, 2024 response on this ground. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 (*Dougherty*) [a point asserted without argument or authority in support is without foundation and requires no discussion].)

Petitioner also argues that the November 7, 2024 response does not respond to all of the allegations in the September 19, 2024 petition. However, Petitioner has filed multiple petitions and amendments without leave of court. Prior to the court's determination that the September 19, 2024 petition was the operative petition, it was not clear that the September 19, 2024 petition was intended to be a petition. The September 19, 2024 petition is notably not labeled as a petition. Further, Petitioner cites no authority indicating that failure to respond to all of the allegations in a petition requires a responsive pleading to be stricken. The court declines to strike the November 7, 2024 response or any portion thereof on this ground.

Finally, Petitioner contends that Respondent's arguments in the November 7, 2024 response regarding Petitioner's standing are legally incorrect. The court declines to strike the response or any portion thereof on this ground. Both parties have made arguments regarding Petitioner's standing in multiple briefs, taking opposite positions. The fact that Petitioner does not agree with Respondent's standing argument does not render it subject to a motion to strike, which targets only pleadings or portions of pleadings that are "irrelevant, false, or improper matter" or that are "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (§ 436.)

Accordingly, the motion to strike is DENIED.

III. Petitioner's Motion for Leave to Amend, Motion to Compel, and Motion to Redact

On December 23, 2024, Petitioner filed a motion for leave to amend his petition.⁵ No proof of service was filed with the motion. On January 3, 2025, Petitioner filed a document titled "Second Amended Notice of Motion and Motion for Leave to Amend the Petition". No proof of service was filed with that document.

Also on December 23, 2024, Petitioner filed a motion titled "Motion to Redact Non-Operative Portions of Document". No proof of service was filed with the motion.

On December 30, Petitioner filed a motion to compel Respondent to provide discovery.

A proof of service filed December 30, 2024 indicated that all three motions were served on December 23, 2024. All three motions were previously set for hearing on January 17, 2025.

On January 7, 2025, Respondent filed a single notice of untimely service as to all of these motions. Respondent asserted that the last day for electronic service of a motion with a hearing date of January 17, 2025 was December 20, 2024. Respondent contends that service was made on December 23, 2024, which is consistent with the proof of service mentioned above. He requests that the court order the motions off calendar.

Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (b).)⁶ An additional two days is added for electronic service. (§ 1010.6, subd. (a)(2)(B).) By the court's calculations, the last day to serve the motions was December 22, 2024, not December 20, 2024. Nonetheless, Petitioner's service of the motions on December 23, 2024 for a January 17, 2025 hearing date was untimely. Petitioner is admonished that he must comply with all applicable procedural rules or the court may decline to consider his filings in the future.

In light of the court's ruling on the motion for judgment on the pleadings, the court finds that the motion to compel discovery and the motion for leave to amend are MOOT. The motion to compel seeks items that might have been relevant to Petitioner's claims for invalidation of the 2023 will. However, the court has determined that Petitioner lacks standing to pursue those claims. Accordingly, to the extent discovery is necessary, Petitioner must seek discovery relating to the claims that remain. Petitioner has filed multiple motions or amended motions to amend. The December 23, 2024 motion to amend seeks to add information Petitioner contends will show he has standing. However, the evidence he discusses only alleges that Petitioner is a beneficiary of Decedent's trust. For the reasons discussed above, this does not show that Petitioner has standing to bring a will contest. To the extent Petitioner seeks to amend to add elder abuse claim,

⁵ Petitioner titles this an amended motion and Petitioner previously filed motions to amend.

⁶ All further undesignated statutory references are to the Code of Civil Procedure.

he must do so through a motion providing the proper statutory notice taking into account the court's holding as to Petitioner's standing to bring a will contest.

As to the motion to redact, it is DENIED. The motion to redact seeks sealing or redaction of a letter Petitioner contends was sent to him from a State Bar investigator. To the extent Petitioner seeks to seal portions of this letter, Petitioner has not explained where in the court record he has filed an unredacted version of the letter. Notably, the letter is attached to the motion to seal or redact in a redacted form. To the extent Petitioner is seeking to redact the letter, it is already redacted. The court does not understand what relief Petitioner is seeking. It appears that Petitioner is seeking permission to serve the letter in redacted form on Respondent but it is not clear for what purpose he seeks to do so. Accordingly, the motion is denied.

CONCLUSION

The court hereby orders as follows:

1. Respondent's motion for judgment on the pleadings is GRANTED WITHOUT LEAVE TO AMEND as to the first through fourth causes of action in the September 19, 2024 petition. The motion is DENIED as to the fifth through seventh causes of action, which will be considered as objections to Respondent's request to be appointed personal representative.
2. Petitioner's motion to strike Respondent's November 7, 2024 response to Petitioner's September 19, 2024 petition is DENIED.
3. Petitioner's motion to compel discovery and motion for leave to amend are MOOT.
4. Petitioner's motion to redact non-operative portions of document is DENIED.