Capacity and Undue Influence Challenges in Trust and Estate Litigation

by Denise E. Chambliss

In litigation pertaining to disputes over trusts or wills, invariably a party will play the "lack of capacity" card. A "lack of capacity" is a legal theory asserted to undo a "transaction". The transaction could be a will, trust, or other type of property transfer. In trust and estate litigation, the lack of capacity argument is often asserted – yet rarely found. The primary reason for this result is the extremely high burden of proof required to sustain that argument.

The starting point of capacity begins with the basic presumption that everyone is capable of contracting except for minors and persons of unsound mind. Civil Code §1556. In California, the Probate Code specifies that people are presumed to be competent to make decisions and to be responsible for their acts or decisions. See Probate Code §810 (a); Estate of Arnold (1940) 16 Cal.2d 573, 587-588. For testamentary decisions, the Code specifies that sufficient mental capacity to make a will requires three elements, which are first, an understanding of the nature of the testamentary act, second, an understanding of the extent and character of one's property, and third, an understanding of the relationship to family members and those whose interests are affected by the will. Probate Code §6100.5; see Estate of Arnold (1940) 16 Cal.2d 573, 588.

It is critical to note that capacity require that all three elements be present at the moment of the document's execution. Given that narrow focus, the capacity presumption is so strong that even people with temporary delusions are presumed to act with capacity during periods of lucidity. Anderson v. Hunt (2011) 196 Cal.App.4th 722, 727. Likewise, the loss of mental vigor due to age does not evidence a lack of testamentary capacity, even though where accompanied by a degree of forgetfulness. Estate of Doty (1949) 89 Cal.App.2d 747. "[O]ld age, feebleness, forgetfulness, filthy personal habits, personal eccentricities, failure to recognize old friends or relatives, physical disability, absent-mindedness and mental confusion do not furnish grounds for holding that a testator lacked testamentary capacity." Anderson v. Hunt (2011) 196 Cal.App.4th 722, 727 (citations omitted).

The California Supreme Court case of the Estate of Arnold is a good demonstration of the minimal showing of testamentary capacity needed to defeat a capacity challenge. In the Arnold case, the testator was a drunk. The testator was almost continuously intoxicated and irrational and suffered from an emotional disturbance, feared that "enemies" were talking about him, was nervous and shaky with a tremor in his hands, with no memory at all, and had problems with basic hygiene care. Estate of Arnold (1940) 16 Cal.2d 573, 592-593 (dissent opinion). Yet the California Supreme Court held that his handwritten will was convincing evidence that it was not prepared by a drunken person, as it was written in plain legible style, no nervousness or trembling by the testator indicated in the body of the will, and there was only one misspelled word. Id. at 588. Of the bequeaths, testator's primary beneficiaries were two friends who had been kind to him and cared for him. Id. Overall, the will itself demonstrated the testator knew precisely what he was doing and how he desired to dispose of his estate. Id. at 590. As such, despite the compelling evidence of possible incapacity, the California Supreme Court upheld his handwritten will as a valid testamentary act at the time the will was written and not void for lack of capacity.

For the capacity necessary to execute a trust, there is no statute in the Trust Law (Probate Code §§ 15100-19403) that discusses the capacity required to execute, amend, or revoke a trust. The guiding standard to create trust is generally the capacity to transfer property. See Walton v. Bank of Cal. (1963) 218 Cal.App.2d 527,541; 13 Witkin, Summary of California Law, Trusts §25 (10th ed. 2005); Restatement (Third) of Trusts § 11 (2003).

In regards to evidentiary considerations, admissible evidence on capacity challenges can be based opinions of both experts and nonexperts. American Trust Co. v. Dixon (1938) 26 Cal.App.2d 426. A diagnosis of a mental deficit is not conclusive; rather, the lack of capacity to make a trust exists if trustor has a deficit in a mental function, and not just a diagnosis; and evidence of a correlation between that deficit and the decision or act in questions. Probate Code §811 (a). As such, medical testimony on capacity is not conclusive on the determination of one's capacity. Estate of Goetz (1967) 253 Cal.App.2d 107.

An argument that is a close companion to the capacity challenge is an undue influence attack. Like the capacity challenge, an undue influence challenge against a trust or testamentary document asserts that the action at issue was not the result of the settlor or testator but rather the action was the result intended by the influencer. Undue influence must, in effect, destroy the testator's free agency and substitute for his own another person's will. Estate of Arnold (1940) 16 Cal.2d 573, 588. The undue influence must direct what the testator gives, as desired by someone other than the testator. "Mere general influence, however strong and controlling, not brought to bear upon the testamentary act, is not enough; it must be influence used directly to procure the will." Estate of Arnold (1940) 16 Cal.2d 573, 588. The mere opportunity to influence the mind of the testator, even coupled with an interest or motive to do so, is not sufficient. Id.

Moreover, "[p]roof of conduct which merely inspires affection and gratitude, standing alone, does not even tend to prove undue influence." Estate of Doty (1949) 89 Cal.App.2d 747, 755. "Influence gained by kindness and affection will not be regarded as 'undue' if no imposition or fraud be practiced, even though it induce the testator to make … an unjust disposition of his property in favor of those who have contributed to his comfort." Estate of Bould (1955) 135 Cal.App.2d 260, 272.

Whether bringing or opposing a capacity and/or undue influence in a trust or estate litigation, counsel should be mindful of the low probability of success of either challenge. Furthermore, the legal expenses and expert witness opinions necessary to prosecute and defend such arguments are costly and could eclipse the underlying amount in controversy.

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