Filed 2/2/17

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

NAZILA YADEGAR,

Petitioner and Appellant,

v.

MATIN YADEGAR,

Objector and Respondent.

B271627

(Los Angeles County
Super. Ct. No. BP161477)

APPEAL from an order of the Superior Court of Los Angeles County. William P. Barry, Judge. Affirmed in part, reversed and remanded in part.

Lurie, Zepeda, Schmalz, Hogan & Martin, Steven L. Hogan, Payton E. Garofalo and Julian M. Feldbein-Vinderman for Petitioner and Appellant.

Sacks, Glazier, Franklin & Lodise, Robert N. Sacks and Ryan D. Houck for Objector and Respondent.

* * * * * *

Before they divorced, a father and mother put one of their homes in a trust for the benefit of their three minor children. In the midst of the divorce, mother filed a petition on behalf of the children in probate court seeking to remove father as the trustee, to remove father's father as special trustee, and to obtain $630,000 as well as punitive damages based on father's alleged breach of fiduciary duty. The probate court appointed a guardian ad litem for the children and, after the guardian ad litem found that father was acting in the children's best interest, ultimately dismissed the petition without an evidentiary hearing. Mother appeals this dismissal. We conclude that mother has standing as one of the "settlors" of the trust to press her claim for removal of the trustees (but not her claim for breach of fiduciary duty), and remand for an evidentiary hearing on her removal claims.

FACTS AND PROCEDURAL BACKGROUND

Nazila Yadegar (mother) and Matin Yadegar (father) have three children—Jordan (born 2001), Ashton (born 2002), and Ella (born 2006). In 2012, while they were still married, mother and father created an irrevocable trust to "provide for the security and well-being of their children . . . ." Mother and father were the trust's "settlors," and in that capacity, they deeded their Beverly Hills home to the trust. Father was the trust's trustee; the three children were the trust's beneficiaries; and father's father was the trust's special trustee who was responsible for distributing income from the property to the beneficiaries. Mother and father thereafter divorced.

In the midst of the divorce proceedings, mother filed a petition in probate court to (1) remove father as trustee, (2) remove father's father as the special trustee, and (3) obtain restitutionary damages of $630,000 as well as punitive damages

due to father's alleged breach of fiduciary duty. Citing Probate Code sections 15642, 15660, and 17200,[1] mother sought to file the petition "on behalf of" the children, "as [their] parent." The probate court invited mother and father to petition the court to appoint a guardian ad litem to represent the children. The parties filed competing petitions: Mother sought to have herself appointed; father asked that a neutral third party be appointed. The probate court denied mother's petition, granted father's, and appointed a third party as a guardian ad litem.

The court directed the guardian ad litem to determine whether "[t]o maintain or dismiss" the petition mother had filed. The guardian ad litem filed a report. In that report, the guardian ad litem (1) recommended that the petition be dismissed because he found "zero evidence that [father] has anything but the best interests of his children in mind," and (2) recommended that, going forward, father be required to certify to mother that he paid the trust $15,000 per month in rental income on the property.

Following receipt of the guardian ad litem's report, mother demanded that her petition move forward and requested an evidentiary hearing. In response, father filed a motion to dismiss the petition on the grounds that (1) the report's findings established that "'the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary,'" thus warranting dismissal under section 17202; and (2) mother lacked standing to participate in further proceedings because the court had appointed a guardian ad litem for the children that was not mother. Mother opposed, arguing that (1) the petition was still necessary; and (2) she had standing to litigate the proceeding

---

1 All further statutory references are to the Probate Code unless otherwise indicated.

(a) as a "'person . . . whose right, title, or interest would be affected by the petition'" under section 17203, subdivision (b), and (b) as a "parent[]" seeking to "maintain an action for injury to [a] child caused by the wrongful act . . . of another" under Code of Civil Procedure section 376, subdivision (a).

The probate court granted father's motion to dismiss. Specifically, the court ruled that (1) dismissal was warranted because the guardian ad litem functions "essentially [as] a referee," and "the findings set forth by the [guardian ad litem] . . . are proper and supported"; and (2) mother "lacks standing." The court declined to hold an evidentiary hearing, explaining that mother did not "have standing" to demand one.

Mother filed this timely appeal.

DISCUSSION

Mother argues that the probate court erred in dismissing the petition without an evidentiary hearing. Her claim turns on two questions: (1) does she have standing to prosecute all or part of the petition, and if so, (2) did the probate court err in dismissing the petition without first holding an evidentiary hearing? Father responds that we are without jurisdiction to entertain mother's appeal because she did not appeal the initial appointment of the guardian ad litem. Standing is a question of law, and the necessity of an evidentiary hearing and the propriety of this appeal both turn on questions of statutory interpretation; accordingly, we independently review all of these issues. (See *Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, 368 [standing]; *John v. Superior Court* (2016) 63 Cal.4th 91, 95 [statutory construction].)

I. Appealability

Father argues that mother's appeal should be dismissed because (1) she is essentially attacking the probate court's order appointing the guardian ad litem, (2) that order was previously appealable, and (3) mother's failure to appeal that order "within the prescribed time" leaves "this court . . . without jurisdiction to review that order on a subsequent appeal" (*In re Marriage of Lloyd* (1997) 55 Cal.App.4th 216, 219 (*Marriage of Lloyd*), citing Code Civ. Proc., § 906). We reject this argument because the first two premises of father's argument are incorrect.

To begin, mother's appeal is not assailing the probate court's order appointing the guardian ad litem. Instead, she is asserting that she has standing to prosecute the petition notwithstanding the court's appointment of the guardian ad litem. Indeed, her appeal in this case rests on the premise that the court's appointment order was correct.

Further, the probate court's earlier order appointing the guardian ad litem was not immediately appealable. Father's argument that the earlier order was appealable seems to rest on the following logic: (1) a party may appeal an order "[a]uthorizing, instructing, or directing a *fiduciary*" (§ 1300, subd. (c), italics added); (2) the Probate Code defines a "fiduciary" to "mean[] [a] *personal representative* [for administration of a decedent's estate], trustee, *guardian*, conservator, attorney-in-fact under a power of attorney, custodian under the California Uniform Transfer To Minors Act . . ., *or other legal representative* subject to this code" (§ 39, italics added; see also § 8400 [regarding appointment of personal representative for estate administration]); and (3) a guardian ad litem is a type of "guardian" or other "personal" or "legal representative."

Father's argument fails because the third step of his syllogism is incorrect. Despite the fact that the phrase "guardian ad litem" contains the word "guardian," the former is not a subset of the latter. A "guardian" is a person appointed to "take care of the person or property of a minor" (*D. G. v. Superior Court* (1979) 100 Cal.App.3d 535, 546); a "guardian ad litem" is a person "appointed only for purposes of [a specific legal action], [and who is appointed] solely to protect and defend the [minor's] interest in the suit" (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 643; *Sarracino v. Superior Court* (1974) 13 Cal.3d 1, 13; *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 47). They are different roles, and this is why a minor can have two different people serving as a guardian *and* a guardian ad litem at the same time. (*Golin*, at p. 643.) Along the same lines, a guardian ad litem is not a "personal" or "legal representative" in terms of being a fiduciary because those latter roles contemplate a far broader role than representation in a single lawsuit. (Accord, *Estate of Hughes* (1978) 77 Cal.App.3d 899, 901-902 [order appointing "special administrator," which is a court-appointed limited or temporary administrator, is not immediately appealable]; §§ 1303, subd. (a), 8540.) More to the point, a guardian ad litem is "obviously appointed in contemplation of future hearings . . .," so "the appointment order [is] preliminary to these future proceedings and [is] not [immediately] appealable." (*Marriage of Lloyd*, *supra*, 55 Cal.App.4th at p. 220; accord, *Golin*, at p. 643; *In re Marriage of Caballero* (1994) 27 Cal.App.4th 1139, 1149.)

In sum, mother's appeal is properly before us.

II. Standing

Mother contends that she has standing to prosecute the petition seeking removal of father as trustee (and father's father as special trustee) and seeking damages for breach of fiduciary duty, notwithstanding the probate court's appointment of a guardian ad litem, because (1) she is a "person . . . whose right, title, or interest would be affected by the petition" (§ 17203, subd. (b)), and (2) she is a "settlor" of the trust entitled to petition to have a "trustee . . . removed" under section 15642, subdivision (a).[2]

A. Standing as an "Interest[ed]" "Person"

A probate court "has [the] general power and duty to supervise the administration of trusts." (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427.) Toward those ends, our Legislature has provided that "a trustee or beneficiary of a trust may petition the court . . . concerning the internal affairs of the trust," and in such a petition may, among other things, seek to "remov[e] a trustee" or to "[c]ompel[] redress of a breach of the trust by any available remedy." (§ 17200, subds. (a), (b)(10), (b)(12).) When such a petition is filed, the petitioner must give notice to "any person . . . whose right, title, or interest would be affected by the petition." (§ 17203, subd. (b).) The Probate Code further defines an "interested person" as "any . . . person having a property right in or claim against a trust estate" (§ 48, subd. (a)(1)), but notes that the definition is contextual—that is, whether a person is considered an "interested person" "may vary

---

2 Mother does not press on appeal the argument that she has standing as a parent under Code of Civil Procedure section 376. Even if she had made such an argument, it fails for the same reasons as her argument for standing under section 17203.

from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding" (*id.*, subd. (b)). This is why a probate court's determination that a person is or is not an "interested person" is reviewed deferentially. (*Estate of Prindle* (2009) 173 Cal.App.4th 119, 126.)

Even if we assume that a person who is entitled to notice under section 17203 may be equated with a person who has standing to prosecute a petition under section 17200, mother does not qualify as an "interested person" for two reasons. First, "interested person[s]" are those with "a *property* right in" the trust estate. (§ 48, subd. (a)(1).) Mother is just the settlor (that is, the person who created the trust (13 Witkin, Summary of Cal. Law (10th ed. 2005) Trusts, § 25)); because this is an irrevocable trust, she no longer has any property interest in the trust. (Cf. *Estate of Giraldin* (2012) 55 Cal.4th 1058, 1068-1069 ["during the time the trust is revocable, the settlor has the rights afforded beneficiaries"]; § 15800.) Mother argues that she has a substantive due process interest, as a parent, "to make decisions concerning the care, custody, and control of [her] children." (*Troxel v. Granville* (2000) 530 U.S. 57, 66.) Even if we assume that this constitutional right extends to governing a child's financial well-being as part an estate plan, substantive due process confers, at most, a "*liberty* interest" (*ibid.*, italics added)—not a property interest. It is to no avail here. (Accord, *Estate of Maniscalco* (1992) 9 Cal.App.4th 520, 523 [section 48 "provid[es] the court with the authority to designate as an 'interested person' anyone having a *property right* in or claim against an estate which may be affected by the probate proceeding," italics added].)

Second, even if mother's constitutional liberty interest somehow translates into a cognizable property interest, the probate court did not abuse its discretion in weighing the policy considerations and concluding that mother is not an "interested person" in the context of this case. To recognize mother as an "interested person" would not only have been inconsistent with the probate court's reason for appointing a third party guardian ad litem in this case in the first place. (E.g., *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 753 [noting that "[p]arental conflicts of interest may in some instances disqualify parents from" acting as guardians ad litem]; § 1003 [empowering court to appoint guardian ad litem when "representation of the [minor's] interest otherwise would be inadequate"].) It would also effectively result in two persons—the guardian ad litem and mother—purporting to advocate on the children's behalf; the purpose of a guardian ad litem to give the children a voice would not be served by giving them two voices, one neutral and one biased.

B. Standing as a "Settlor"

In addition to the power of a "trustee or beneficiary" to petition for relief under section 17200, section 15642 also empowers a probate court to remove a trustee upon a "petition *of the settlor*, cotrustee, or beneficiary" as well as "on its own motion." (§ 15642, subd. (a), italics added.) Because it is undisputed that mother was one of the two settlors of the trust, she has standing to file a petition to remove the trustee under section 15642.

Father argues that mother cannot rely on this ground because she did not argue it when opposing his motion to dismiss and because she alleged in her petition that she "has standing as

[a] parent." Father's observations are correct, but they do not preclude mother's standing. Mother's petition also alleged mother was one of the trust's settlors and cited section 15642; these allegations put father on notice of the potential applicability of section 15642. Additionally, a party's pleadings are not a straitjacket; to the contrary, pleadings are to be liberally amended to conform to proof. (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 827.) Issues of standing are in any event threshold issues that may be raised at any time, particularly when they involve pure questions of law to be evaluated on undisputed facts. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438-439; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 912.) We accordingly decline father's invitation to treat the issue as forfeited.

Mother asserts that her standing as a co-settlor not only allows her to seek removal of the trustee and special trustee, but also to pursue other claims because section 15642 authorizes a petition under section 17200, and section 17206 empowers a court hearing a section 17200 petition to "make any orders and take any other action necessary or proper to dispose of the matters presented by the petition." (§ 17206.) We decline to read section 15642 as a needle which, once threaded, puts a settlor on identical standing to a trustee or beneficiary under section 17200 because doing so would effectively rewrite section 17200. We are not allowed to rewrite statutes. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 956 [courts may not "rewrite statutes"].) And even if we construed section 17206's expansive language as being in tension with section 15642's more narrow language, our job is to harmonize the two statutes—not to

implicitly repeal one to give the broadest possible reading to the other. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838.) We accordingly conclude that mother has standing under section 15642 to assert her first two claims for the removal of the trustee and special trustee; her third cause of action for breach of fiduciary duty was properly dismissed for lack of standing.

III. Entitlement to Evidentiary Hearing

Mother argues that the probate court erred in denying her an evidentiary hearing. She is correct. Where a probate proceeding is "uncontested," the probate court may decide a petition on the papers. (§ 1022 ["[a]n affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code"].) However, where a probate proceeding is contested and an evidentiary hearing is requested, the court must convene such a hearing. (*Estate of Lensch* (2009) 177 Cal.App.4th 667, 676; *Estate of Bennett* (2008) 163 Cal.App.4th 1303, 1309-1310.) Because mother asked for an evidentiary hearing, she is entitled to one on the two claims she has standing to assert. We add that, in coming to this conclusion, we express no view on the merits of mother's petition; that is left to the probate court in the first instance.

DISPOSITION

The probate court's order is affirmed in part and reversed in part and remanded for an evidentiary hearing on mother's two claims to remove the trustee and special trustee. Each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ