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**Conservatorship of CLARA ROSENTHAL; TIFFANY ST. IVES, Petitioner and Appellant, v. MARK ROSENTHAL, Conservator, etc. and Respondent.**

B211626

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,  
DIVISION THREE**

*2010 Cal. App. Unpub. LEXIS 5724*

**July 21, 2010, Filed**

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**PRIOR HISTORY:** [\*1]

APPEAL from orders of the Superior Court of Los Angeles County. Los Angeles County Super. Ct. No. BP106847. Michell L. Beckloff, Judge.

**DISPOSITION:** Affirmed.

**COUNSEL:** Betty A. Miller for Petitioner and Appellant.

Weinstock, Manion, Reisman, Shore & Neumann, Blake A. Rummel and Adam L. Streltzer for Conservator, etc. and Respondent.

**JUDGES:** KITCHING, J. We concur: KLEIN, P. J., ALDRICH, J.

**OPINION BY:** KITCHING

**OPINION**

**INTRODUCTION**

Petitioner and appellant Tiffany St. Ives (Tiffany) appeals orders granting, in part, her petition for substituted judgment pursuant to *Probate Code section 2580 et seq.*<sup>1</sup> In her petition, Tiffany sought payments of \$ 10,000 per month from the estate of her mother, conservatee Clara Rosenthal (Clara). The superior court granted the petition but limited the payments to \$ 8,000 a month for four months, \$ 6,000 per month for two months, and then \$ 4,000 per month thereafter. We hold that the superior court did not abuse its discretion in granting Tiffany's petition, as modified.

1 All future section references are to the Probate Code.

**FACTUAL AND PROCEDURAL BACKGROUND**

Tiffany moved out of her parents' home when she was 13 or 14 years old. She is now in her fifties. Her parents have supported her financially all of her [\*2] life.

For most of her adult life, Tiffany's father made payments to Tiffany. Although Clara knew about the assistance, she was not actively involved in making payments. In 2004, Tiffany's father died. Thereafter, Clara continued making payments to Tiffany in the amount of \$ 8,000-\$ 10,000 per month with the

assistance of Clara's son and Tiffany's brother, conservator Mark Rosenthal (Mark).

Tiffany used the payments for her own living expenses and to support a non-profit organization known as the Purple Cow. The Purple Cow took care of approximately 120 animals on the rural property where Tiffany lived. Tiffany operated the Purple Cow with the assistance of two employees who were paid cumulative wages of \$ 6,000 a month.

On August 12, 2007, Clara had a stroke. The stroke left Clara mentally incompetent and requiring a 24-hour caregiver. Clara is in her eighties. In approximately November 2007, Mark was appointed Clara's conservator.

Clara's estate is worth approximately \$ 5 million to \$ 7.5 million. The estate consists of two commercial properties that generate rental income, certificates of deposit, stocks, and interests in residential real property.<sup>2</sup>

2 Under Clara's will, her commercial [\*3] properties, residence in Los Angeles, and stocks are given to Mark; her interest in real property located in Valley Center, California (Tiffany's current residence) is given to Tiffany; and the remainder of her estate is divided one half to Tiffany and one half to Mark.

On December 10, 2007, Tiffany filed a petition for substituted judgment. In her petition, Tiffany sought a "monthly allowance" of \$ 10,000 from Clara's conservatorship estate.

On December 18, 2007, the court held a hearing on the petition. At that hearing, Mark opposed Tiffany's petition on the grounds that, in light of Clara's increased expenses after her stroke, the conservatorship estate could not continue to pay Tiffany \$ 8,000-\$ 10,000 a month without selling property or otherwise using the principal balance of its assets. Mark proposed payments of \$ 4,000 a month.

At the hearing, Mark, Tiffany, and Tiffany's and Mark's cousin, Mel Randall, testified. Mr. Randall and Mark testified that Clara did not want to spend the principal of her assets or sell her properties in order to support Tiffany. Mark also testified that Clara was concerned about taking care of Tiffany's basic necessities, such as food and medical attention, [\*4] but

was not concerned about the animals under Tiffany's care. Tiffany testified regarding her personal expenses and the expenses of the Purple Cow.

At the end of the hearing, the superior court ordered Mark, as conservator, to pay Tiffany an \$ 8,000 interim payment immediately and another \$ 8,000 payment on January 15, 2008. The court postponed ruling on the petition until after it received a report from Clara's court-appointed attorney, Donald Scoggins.

On April 30, 2008, Mr. Scoggins filed his report. Section 5 of the report stated the following: "Continuing to supply Tiffany with unlimited funds from [Clara's] estate, as her parents have done for her entire adult life, will ultimately lead to disaster for Tiffany. Historically, the Rosenthals indulged Tiffany, supplying her with whatever level of funding she requested. By doing so, Tiffany's parents unwittingly fostered behaviors in Tiffany that will not serve her well when [Clara's] estate is no longer available to her. The Rosenthals' willingness to indulge Tiffany financially has obviated any need for her to develop budgeting, management, and problem solving skills. Her only skill for financial survival has been to ask her parents [\*5] for money. While the Rosenthals have been able to meet Tiffany's unchecked need for cash because of their considerable resources, they failed to create an end-game for Tiffany following their deaths. As a result, Tiffany is now approaching retirement age without ever having worked to support herself and with no retirement plan in place. Even direr for Tiffany, she has not developed skills necessary for survival without her parents' assets."

In section 7 of the report, Mr. Scoggins noted that in the four months since the December 18, 2007, hearing, Tiffany only raised a few hundred dollars of contributions for the Purple Cow, had not reduced her overhead, and had not found alternative placements for any of her animals. Mr. Scoggins recommended that the court award Tiffany continuing support payments contingent upon her implementation of a cost reducing plan.

On May 5, 2008, the court issued an order regarding Tiffany's petition. In its order the court carefully reviewed the circumstances relevant to the petition.<sup>3</sup> With respect to the value, liquidity, and productiveness of the estate (§ 2583, subd. (h)), the court found that the conservatee needed at least \$ 15,792 a month for her nursing [\*6] home care. The court further found that the estate had a negative cash flow of \$ 6,000 a month, and

that the conservatorship estate needed to "invade principal to meet expenses as they become due."

3 Section 2583 sets forth a non-inclusive list of circumstances the court should consider in adjudicating a petition for substituted judgment. The court applied the facts of the case to section 2583, subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k).

The court also noted that the estate could be liquidated as needed to pay Tiffany \$ 10,000 a month. However, the court found that a reasonably prudent person in Clara's position would not do so. On this point, the court found Mr. Scroggins report persuasive, and expressly adopted the reasoning of sections 5 and 7 of the report.

The court then granted the petition, with certain modifications. Tiffany was awarded \$ 8,000 per month for the months of May 2008, June 2008, July 2008, and August 2008; \$ 6,000 per month for the months of September 2008 and October 2008; and beginning in November 2008, \$ 4,000 a month. In addition, Mark was ordered to pay from the conservatorship estate the real property taxes and homeowner's insurance [\*7] associated with the Valley Center property where Tiffany resided and ran the Purple Cow. <sup>4</sup>

4 There was no mortgage on the property. Tiffany thus did not have any monthly mortgage or rent obligations.

On May 19, 2008, Tiffany filed a motion for reconsideration. The court denied that motion on August 21, 2008. The court also amended the May 5, 2008, order "to reflect the following: allowance ordered for Tiffany St. Ives will not be deducted from any inheritance." This appeal followed. <sup>5</sup>

5 An order granting, denying, or granting with modification a petition for substituted judgment is appealable. (§ 1301, subd. (d).)

## CONTENTIONS

Tiffany argues that the superior court abused its discretion by failing to order Mark to pay her with conservatorship funds \$ 10,000 a month.

## DISCUSSION

In *section 2580 et seq.*, the Legislature codified the substituted judgment doctrine. (*Conservatorship of Hart (1991) 228 Cal.App.3d 1244, 1251-1252 (Hart); Conservatorship of Kane (2006) 137 Cal.App.4th 400, 403 (Kane)*.) "The doctrine underlying the substituted-judgment statute was first recognized in California in *Estate of Christiansen (1967) 248 Cal.App.2d 398 . . . Christiansen* declared 'that the courts of this state, [\*8] in probate proceedings for the administration of the estates of insane or incompetent persons, have power and authority to determine whether to authorize transfers of the property of the incompetent for the purpose of avoiding unnecessary estate or inheritance taxes or expenses of administration, and to authorize such action where it appears from all the circumstances that the ward, if sane, as a reasonably prudent man, would so plan his estate, there being no substantial evidence of a contrary intent.' (248 *Cal.App.2d at p. 424*.) Significantly, *Christiansen* did not require that a court find the ward *would have* acted as proposed; instead it adopted an essentially objective prudent-person standard. Thus *Christiansen* contemplated *substitution* of the court's judgment for that of the incompetent person." (*Hart, at pp. 1251-1252*.)

*Section 2580, subdivision (a)* provides that the court may grant a petition for an order authorizing or requiring the conservator to take action for the purpose of "(1) [\*9] benefiting the conservatee or the estate; (2) minimizing current or prospective taxes; or (3) providing gifts to persons or charities which would be likely beneficiaries of gifts from the conservatee." (*Kane, supra, 137 Cal.App.4th at p. 404*.) In this case, Tiffany seeks an order requiring Mark to make gifts to Tiffany from the conservatorship estate on the ground that Clara would likely make such payments, as a reasonably prudent person. Mark does not dispute that monthly payments should be made to Tiffany. The only dispute is the *amount* of such payments.

Section 2583 provides: "In determining whether to authorize or require a proposed action under this article, the court shall take into consideration all the relevant circumstances, which may include, but are not limited to, the following:

"(a) Whether the conservatee has legal capacity for the proposed transaction and, if not, the probability of the conservatee's recovery of legal capacity.

"(b) The past donative declarations, practices, and

conduct of the conservatee.

"(c) The traits of the conservatee.

"(d) The relationship and intimacy of the prospective donees with the conservatee, their standards of living, and the extent to which [\*10] they would be natural objects of the conservatee's bounty by any objective test based on such relationship, intimacy, and standards of living.

"(e) The wishes of the conservatee.

"(f) Any known estate plan of the conservatee (including, but not limited to, the conservatee's will, any trust of which the conservatee is the settlor or beneficiary, any power of appointment created by or exercisable by the conservatee, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the conservatee's death to another or others which the conservatee may have originated).

"(g) The manner in which the estate would devolve upon the conservatee's death, giving consideration to the age and the mental and physical condition of the conservatee, the prospective devisees or heirs of the conservatee, and the prospective donees.

"(h) The value, liquidity, and productiveness of the estate.

"(i) The minimization of current or prospective income, estate, inheritance, or other taxes or expenses of administration.

"(j) Changes of tax laws and other laws which would likely have motivated the conservatee to alter the conservatee's estate plan.

"(k) The [\*11] likelihood from all the circumstances that the conservatee as a reasonably prudent person would take the proposed action if the conservatee had the capacity to do so.

"(l) Whether any beneficiary is a person described in paragraph (1) of subdivision (b) of Section 21350.

"(m) Whether a beneficiary has committed physical abuse, neglect, false imprisonment, or fiduciary abuse against the conservatee after the conservatee was substantially unable to manage his or her financial resources, or resist fraud or undue influence, and the

conservatee's disability persisted throughout the time of the hearing on the proposed substituted judgment."

Section 2583's "enumeration itself suggests that the Legislature did not anticipate the court would find every enumerated circumstance in every case. Nor does section 2583 explicitly require that every circumstance the court does find and consider be consistent with the action the conservator proposes, although of course the higher the degree of consistency the more readily the superior court may conclude the proposed action should be authorized." (*Hart, supra*, 228 Cal.App.3d at p. 1265.)

Section 2584 provides: "After hearing, the court, in its discretion, [\*12] may approve, modify and approve, or disapprove the proposed action and may authorize or direct the conservator to transfer or dispose of assets or take other action as provided in the court's order." We review the superior court's order approving, disapproving, or approving with modification a petition for substituted judgment for abuse of discretion. (*Hart, supra*, 228 Cal.App.3d at p. 1253.)

Turning to the facts of this case, we find that the superior court acted well within its discretion when it issued its May 5, 2008, order. It is clear that *prior to her stroke* Clara had a long history of making generous, monthly gifts to Tiffany, and that if Clara were still competent, she would have wanted to continue giving Tiffany monthly gifts. However, there was evidence that Clara was motivated to make gift payments to Tiffany to support Tiffany's living expenses, and that Clara was not particularly concerned about the Purple Cow.

Moreover, there was ample evidence to support the superior court's finding that a reasonably prudent person in Clara's position *after her stroke*, would not have continued to make monthly payments in the amount of \$ 8,000-\$ 10,000 to Tiffany. There are two main reasons [\*13] for this conclusion. First, Clara's monthly expenses dramatically increased after her stroke. In order to cover these expenses, Clara needed to invade her principal--a practice reasonably prudent people wish to avoid or at least minimize. Indeed, there was evidence that Clara herself did not want to invade her principal in order to make gifts to Tiffany.

Second, a reasonably prudent person in Clara's position could have concluded that Tiffany's spending habits were unsustainable in light of her limited ability to earn income and her lack of a retirement plan. Hence, a

reasonably prudent mother in Clara's position could have concluded that it was in *Tiffany's* best interest to live within her means by reducing the costs of operating the Purple Cow and by using the funds she received from the conservatorship estate to primarily cover her own living expenses.

The superior court did not abuse its discretion in rejecting Tiffany's request for \$ 10,000 per month in gifts. Under the circumstances, the superior court's award of \$ 4,000 a month, plus payments for property taxes and insurance, was reasonable.

**DISPOSITION**

The superior court orders dated May 5, 2008 and August 21, 2008 are affirmed. [\*14] The parties shall bear their own costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.